

**RESOLUTION TRUST CORPORATION
WHISTLEBLOWERS**

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Resolution Trust Corporation Whistle...

HEARING

BEFORE THE

COMMITTEE ON

BANKING, HOUSING, AND URBAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

**WASTE, FRAUD, ABUSE, MISMANAGEMENT, MISCONDUCT, HARASSMENT,
AND DISCRIMINATION AT THE RESOLUTION TRUST CORPORATION**

SEPTEMBER 23, 1993

Printed for the use of the Committee on Banking, Housing, and Urban Affairs



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RESOLUTION TRUST CORPORATION WHISTLEBLOWERS

THURSDAY, SEPTEMBER 23, 1993

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The committee met at 10:05 a.m., in room 538 of the Dirksen Senate Office Building, Senator Donald W. Riegle, Jr. (chairman of the committee) presiding.

OPENING STATEMENT OF CHAIRMAN DONALD W. RIEGLE, JR.

The CHAIRMAN. The committee will come to order.

Let me welcome all those in attendance this morning.

As luck would have it, we are going to have a vote shortly.

I want to start and make an opening statement, and invite my colleagues to do so as well. I know Senator Kerry is on his way. We have our distinguished House colleague, Representative Schroeder here, who also may be facing a vote on the House side, but we very much want to get her statement and testimony today.

So let me begin now, and we will go as long as we can. When we have to adjourn for a vote, we will do that very rapidly. And I would hope, Congresswoman Schroeder, if you do not get caught with a House vote, that you will be able to stay so that we can go right on into your testimony.

This morning the committee is going to hear allegations of waste, fraud, and mismanagement at the Resolution Trust Corporation. These issues have been brought to our attention over the past year not only from today's witnesses—and I thank them all for coming—but from a number of Senators both on and off the committee, as well as a number of members of the public at large.

Concerns about the RTC are not in any way partisan concerns. They have been raised in hearings before this committee for the past several years by Republicans and Democrats alike.

Most recently, during the course of the committee's consideration of the RTC funding bill back in March, Senators John Kerry, Bryan, Boxer, Campbell, Moseley-Braun, Murray, and Metzenbaum among others, highlighted them at that time.

In their additional views and statements on the Floor, these Senators and others on both sides of the aisle stressed the need to improve the management at the RTC. They indicated that reform of RTC management was a condition for their supporting additional funding.

Among the many issues they focused on was the need to ensure proper financial management and direct accountability at the RTC.

Another overriding priority they highlighted was the need to reform and reinforce the RTC's contracting controls.

Other weaknesses they pointed to included the RTC's inadequate asset recovery, marketing, and information systems, the importance of an effective, independent inspector general, the need to provide real opportunities for minorities and women to participate fully, professional liability issues, and finally whistleblower protection.

The Banking Committee in turn incorporated all of these protections in the Thrift Depositor Protection Act of 1993. I know from conversations with the Clinton administration that it is absolutely committed to making these improvements.

In hearings before the committee, Senators D'Amato, Domenici, and Bond have repeatedly stressed their concerns, as have virtually every other Member of the committee, with certain RTC management problems.

Shortly we will be considering the nomination of Stanley Tate to be the new Chief Executive Officer of the Resolution Trust Corporation. It is vitally important—and I underscore that—that he be made directly and fully aware of the many areas for improvement that we have identified.

I want to particularly acknowledge my colleague, Senator John Kerry from Massachusetts, for his really outstanding work in helping put together this morning's hearing. He and his staff, and the staff of the committee, have worked closely together.

That has been much appreciated by me. I think the importance of today's hearing, as the facts roll out, will illustrate that point.

I also want to commend all of our witnesses for their willingness to testify today. It takes courage for people to step forward, as they are doing today, to tell the things that need to be heard that they know about, and the committee greatly appreciates their coming forward.

The witnesses here today are people who worked at five of RTC's regional offices, including Atlanta, Chicago, Dallas, Denver, and Newport Beach, California. They include employees from RTC's Legal Division, from Asset Management, and from Administrative Services of various kinds.

In addition, we will receive testimony from one individual from the RTC's Inspector General's Office who has made some disturbing allegations concerning that office's effectiveness.

We are especially pleased to be joined this morning by our very distinguished House Colleague, Congresswoman Pat Schroeder. I want to particularly welcome her, and I will have more to say when we call on her.

Let me now turn to other Members for opening statements. Let me start, if I may, with you, Senator Kerry, for your important role in this, and then I will go to Senator Bond.

OPENING STATEMENT OF SENATOR JOHN F. KERRY

Senator KERRY. Thank you very much, Mr. Chairman.

I am particularly grateful to you for holding this hearing, and for your interest and support in the effort to try to examine the RTC. You have held many, many hearings on the RTC, and you have tried diligently to provide the oversight that is necessary, and I am

very, very appreciative to you for your commitment to do that, and for being willing to do it today. I would like to share some thoughts about why I think this is important, and not just sort of another kind of hearing.

We are, all of us, increasingly reminded by the public of the enormous gap between what we come here to do and what we are perceived as accomplishing. This is not a problem that can be taken lightly. It really cannot. It is the heart of what this Country is all about. As you watch the Soviet Union, the former Soviet Union, going through upheaval, as you watch other countries struggling with this notion called "Democracy," it is rather interesting to watch here at home how we treat it ourselves.

I know you, Mr. Chairman, and all of us have come here with a particular set of ideals and a particular set of beliefs about what we want to accomplish. At the center of that I think is really our notion that we are here holding the public trust responsible for how our citizens' dollars are spent.

Increasingly we are finding that our citizens are angry about that: angry about a Government that seems to act as if it is beholden only unto itself, or to the people who are temporarily in these seats that we hold.

I think that all of us need to be a heck of a lot more sensitive to our responsibilities in delivering to people. I want to particularly, therefore, single out and thank those who have chosen to come forward and testify today.

We have all served in institutions. I spent 4 years in the military and I spent 6 years in the Prosecutor's Office. We all know the turf tensions. We all understand how pressures in the work place are brought to bear, and each institution creates its own culture, you know.

Do not upset the apple cart. Do not go out and say that. Well, gosh, you are going to hurt people here within the institution. You are going to jeopardize your job. Why make life miserable for people? It is a lot easier just to go along and get along.

That culture begins to destroy the heart of the public trust that we have all been given. Ultimately it begins to destroy people's faith in the process itself, which destroys our ability to make decisions, because there is no legitimate consensus in this country for what we are trying to do because there is no credibility.

So I think this is not just an isolated kind of event. This is my personal observation of it. If we cannot prove to people that we are somehow holding the system accountable, that we care about how those dollars are spent, that we can establish an ethic that is bigger than just that sort of internal culture of the institution, but rather a larger ethic about the larger ideals around which our Government was founded and who we are responsible to, I do not take it lightly and I do not think any of my colleagues take it lightly, but I want to make it very clear that those of you who come here today who are called "whistleblowers," which is in itself a terrible term—

I think you are "Patriots" in the best sense of the word. You are people who want to hold the system accountable. You are citizens who pay your taxes who are outraged by practices that you have been made a party to, and are somehow expected to condone, that

are contrary to the very best sense of what all of us ought to be delivering.

You are public servants who do not believe that "public service" entitles you to rip off the public. I think that deserves to be applauded, not discouraged, and it definitely deserves to be protected.

There is no other way we are going to hold the system accountable, if the people within the system do not feel that accountability. So I say that this committee has a special sense of responsibility to guarantee that when you go back to that workplace you are not victimized, that you are indeed protected, and that we go forward from here understanding our own obligations.

Now, why are we here today?

We have all heard from the GAO that, gee, there are some problems down at the RTC. We hear people say there is waste and fraud and abuse, but these are words that have become so commonplace they almost do not have meaning now.

I am not sure that there is an agency in Government where we do not hear about waste, fraud and abuse. It is a cliché, but it does not have meaning until you begin to give life to the incidents and practices which constitute that waste, fraud and abuse.

Now I reluctantly voted for additional money to continue to fund the RTC, recognizing that there were big problems down there, and all of us at the time expressed our sense that the Treasury really did not have an adequate picture of those problems.

I thought I did. Candidly, until many of the folks who have come here today to testify, and indeed until many of those who are not even here today because they fear to testify—just to make people clear on the gap between those who corroborate what is going to be said here today versus those who had the courage to come forward, there is a gap—there were many who told us things but who said I cannot put myself in that position, or I fear for retribution to my company, and so they are not here today.

But the RTC has failed to operate according to the law that was established by the U.S. Congress. They were supposed to maximize recovery on assets, and GAO has concluded that they have not—for a lot of the reasons I just articulated.

We required the RTC to minimize its negative impact on local markets as they sell off properties. In fact, we have heard from one experienced RTC real estate manager in California that there is substantial reason to believe, or at least it is a question whether the RTC has not really contributed significantly to a certain drop in real estate prices as a result of forced sales.

We required the RTC to make efficient use of funds. We found enormous failures there. We have actually learned how some RTC managers leave funds sitting in interest-free accounts, literally costing the Taxpayers thousands of dollars, for no reason at all.

We required the RTC to minimize losses in resolving cases by going after wrongdoers, and we found that it disrupted its own ability to do that through a reorganization that resulted in demoralization of staff and loss of some of those cases.

Early this year, we asked our staff of this committee to go out and really try to talk directly to RTC employees to determine whether the kinds of problems that were identified by the GAO were indeed being cleared up. Did we understand those problems

thoroughly? I wanted to determine whether there were ongoing management problems in addition to the obvious difficulties that the RTC was having.

Well, we found, to our dismay, that literally dozens of managers and employees from RTC across the country were candidly confessing to our office that the GAO's reports of disarray literally only scratched the surface; that the reality is worse. As one recently departed official from the RTC in Washington told my staff, it is not only a catastrophe, but it is a snakepit.

We were told of case after case of waste, fraud, and mismanagement, many cases involving people at senior levels. We heard allegations of steering contracts from RTC personnel to former or future employees.

We heard of major accounting firms receiving enormous contracts ill-equipped to do it, and then going out and hiring inexperienced people to do what they had promised to do, and doing incompetent work, and padding their bills, to boot.

We were told of RTC managers telling lower level employees to pay bills, regardless of the quality of the work, even when that work was being questioned and when there was sufficient cause to question the quality of the work.

We were told about faulty computer systems for legal billings with thousands of lost invoices so that the RTC could not even determine if a bill was legitimate or not.

We were told repeatedly about cases of sexual discrimination, and even sexual harassment at the RTC and in the workplace.

Now I cannot vouch for every allegation, but I can tell you when this many people are willing to come forward who currently work somewhere and take an oath and testify under oath, and as many people corroborate that testimony who cannot come forward because of the fear that they expressed, there is, as the old saying goes, fire where there is smoke.

I think it is, at the very least, important to have a full-fledged administrative internal investigation of these, or even some of them, through the Justice Department. There have been disturbing suggestions that the Inspector General's office itself has not functioned as it should have, and we will hear some of that today.

I would just like to take a couple of minutes, Mr. Chairman, to relay to my colleagues some of those things that people who would not come here today, but who have testified to us privately, were willing to say. There was one real estate auction specialist at the RTC who said, and I quote him:

RTC's auction sales are costing the Taxpayers 15 percent or more in relation to the real value of the real estate. The data is massaged to hide the losses through appraisal mechanisms that narrow the difference between the real value and what the RTC actually sells it for. And my office in California—

Quoting him:

—has probably wasted \$500 million of its own and Taxpayers' money due to this process.

Second, the statement of an RTC real estate manager:

Managers at RTC have consistently yelled and cursed at staff, physically and sexually abused staff, targeted women and minorities for abuse, attempted to force staff to break RTC rules and regulations, attempted to force the award of contracts to their friends, attempted to force others to cover up their actions.

A statement of a senior PLS investigator with extensive experience in Government:

I have worked for the Government all my life. Is the RTC worse? Yes. It is the worst I ever saw. This is not the real Government. They don't have any rules. They do their own thing. Places I come from, people are very tight with a dollar. At the RTC, there's no attempt to save the Taxpayer any money. The organization defies any command structure. People aren't held accountable for their actions, and they aren't getting their job done. I've never been in an organization that, when someone brings a problem to management's attention, instead of fixing the problem they try to get rid of the person who brought the problem to their attention.

Finally, the statement of a bankruptcy RTC lawyer who left the RTC employ earlier this year to go to the FDIC. He said:

When I was at the RTC, it was the blind leading the blind leading the blind. We had a receptionist who wound up becoming the person who qualified our attorneys for RTC contracts. She knew nothing about the law, and the lawyers we hired viewed us as nothing but deep pockets. We would pay a lawyer \$46,000 for a collection action that could be done for \$2,500 to \$4,500 in the private sector, for work that did not need to be done, and which was done incorrectly. Then we'd hire the lawyer again. I used to say that the RTC was a theater of the absurd.

Now there are good people at the RTC, and the great difficulty in this kind of effort is always distinguishing between rampant practice and good people who are trying to make things work.

I also appreciate that it is difficult for this committee, or any committee in this instance, to sort out every allegation and every statement. We cannot determine every part of what is fact, and this is not a jury, and this is not a court of law, but we are responsible ultimately for how these dollars are spent.

One of the great roles of the U.S. Congress—not sufficiently pursued I think today—is oversight. We tend to come to the crisis. We tend to respond to it, and then we all go away as if it has all taken care of itself. More often than not, it is not, and it has not been.

So we are here today, and again I thank you, Mr. Chairman, to fulfill that role of oversight and to raise important questions, to probe, and to try to set the stage somehow for some effort to try to guarantee to the citizens of this country that we are not fools, that we are not willing to just waste their dollars, that there is a process in place, and that some people care enough to try to hold it accountable.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Kerry.
Senator Bond.

OPENING STATEMENT OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Mr. Chairman, thank you very much for calling the hearing today. Obviously there is much to be discussed. I want to express my appreciation to our friend, Representative Schroeder, for taking the time to appear before the committee today, and I hope, Congresswoman, that you will have an opportunity to provide your testimony.

I have to apologize in advance that I am going to have to leave because my Appropriations Subcommittee has a markup starting right after the vote, but I assure all of you I plan to review the testimony and the record.

The hearing today is intended to hear testimony from a number of witnesses concerning allegations of employment discrimination, complaints of sexual and racial discrimination, and significant

other complaints concerning waste and abuse at the Resolution Trust Corporation.

While I do not yet have the full information, I am not in a position, nor do I intend to stand in judgment, on any of these complaints. I do believe very strongly this committee has an obligation and a duty to provide appropriate leadership and oversight regarding the actions and policies of agencies over which we have jurisdiction.

I emphasize that we expect all agencies of the Federal Government to comply with all the laws and other applicable requirements, including those relating to the conduct of their employees. Where an agency or an employee of that agency fails to comply with the law or a legal requirement, we demand that the agency take whatever steps are necessary to ensure that the situation or the circumstance is remedied.

I want to stress that I have another concern about the hearing.

We have generally before us testimony of 13 witnesses, some former employees of the RTC, and some current employees of the RTC. Each has a complaint. As I understand it, some of the complaints have been addressed, and some are pending. The RTC has assured me that it takes all complaints seriously, and that it attempts to find equitable solutions, and that it does remedy circumstances or situations where warranted.

The problem I have, Mr. Chairman, is that neither the RTC top management nor the RTC's Inspector General are present today to testify. I do not know whether they have been invited to testify, but I do believe that for us to have a full and fair hearing on these issues we do need the testimony of the RTC and the RTC's Inspector General.

With respect to these and other allegations and complaints that have been made, again, Mr. Chairman, I think this is a very vitally important oversight hearing. I look forward to reviewing the testimony and the record, and I commend you for holding the hearing.

The CHAIRMAN. We have every intention of following up on what we hear today. That is the whole purpose, really, of laying it out, so that we can go down this trail and get to the end of it.

Senator Campbell.

OPENING STATEMENT OF SENATOR BEN NIGHTHORSE CAMPBELL

Senator CAMPBELL. Thank you, Mr. Chairman. I certainly appreciate your efforts and Senator Kerry's efforts for this hearing.

I wanted to welcome my friend and colleague from the great State of Colorado, Pat Schroeder, who has been a terrific warrior, on many battlefields, whether it is for people that are abused in the RTC or the U.S. Navy.

I would point out to her that my dad's people, the Ancient Warriors, when they would vanquish their enemy they would often take their clothes. I was interested in your jacket.

[Laughter.]

Representative SCHROEDER. You noticed.

Senator CAMPBELL. I noticed.

I, like several of my colleagues, had to vote very reluctantly for the \$26.8 billion for the RTC this year. When I was on the House

side, I never voted for it once. I voted against it every time because I felt that their performance simply caused a lot of resentment and anger, not only among the constituents but also among the people in Congress, too, and I would not support it.

Former Senator Bentsen, now Secretary Bentsen, assured me before I voted for it, as he did many of the Members of this committee, that there was going to be a major overhaul and a lot of reform, and I took his word for it.

I think he is still trying to do that, but certainly we have a long way to go. That is why I did vote for it. But we have ourselves a continued mess. The largest city in our State, Denver, recently misplaced, if you can imagine this, \$7 billion in real estate assets.

When they hired an outside firm to clean up the mess, they ended up getting taken by that company, as well. It just seems to me that RTC—the name commonly given to it in Colorado now does not stand for what it stands for, it stands for RIPOFF THE CONSUMER. We have the fifth worst asset recovery rate in the Nation, despite the fact that Colorado's real estate market has weathered the recession better than most States.

Just last week I received a letter from a constituent telling me that the RTC had been bought into a limited partnership in a real estate deal. I asked him to comment on the legality of the deal.

But, legal or not, some people are pretty mad that the RTC is buying into real estate rather than liquidating the real estate.

Today the Denver office of course is no better off than it was before. It is still in hot water for trying to harass RTC employees—and, by the way, some of them are here, and I applaud them for coming to testify.

Bruce Pederson, Jackie Taylor, and John Waechter are here before this committee, and will be on a later panel. I certainly want to commend them for the courage that it took to bring the light of day to some things that should have been taken up a long time ago. I certainly give them my word as a Member of this committee that we are going to make every effort to protect the right that you have as Americans to be able to say what is wrong in Government.

I would also like to welcome Jim Romer, who is the brother of Governor Romer, the Governor of our State of Colorado, who is very active in public service, as his brother is, and look forward to these hearings.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Sasser, the Chairman of the Budget Committee.

OPENING STATEMENT OF SENATOR JIM SASSER

Senator SASSER. Thank you, Mr. Chairman.

This morning, I want to welcome Representative Schroeder and our witnesses.

To those whistleblowers from the Resolution Trust Corporation, I want to commend them for their courage and dedication in coming forward this morning and appearing before the committee and telling us their stories.

The RTC, as we all know, was set up to clean up the mess in the savings and loan industry. We are discouraged and chagrined to learn that the waste, fraud, and abuse in the S&L industry now

appears to be making inroads into the Resolution Trust Corporation that was conceived to clean up the mess.

So in this environment, Mr. Chairman, we in the Congress and in Government generally can have zero tolerance for mismanagement, for waste, and for abuse.

The Taxpayers are demanding that we get 100 cents worth of value out of every dollar spent. So I look forward to hearing from the witnesses today and getting some of these first-hand accounts. Perhaps from their testimony here this morning, we can design an action plan to put trust back into the Resolution Trust Corporation.

So I thank you, Mr. Chairman, and I thank our witnesses for appearing this morning.

The CHAIRMAN. We are joined also this morning by Senator Metzenbaum, who has had a keen interest in this subject and who has done a lot of work from his subcommittee position over on the Senate Judiciary Committee.

He has joined us before as a much-esteemed colleague. We are pleased to have you this morning, and would be pleased to hear any opening comments you would like to make, Senator Metzenbaum.

OPENING STATEMENT OF SENATOR HOWARD M. METZENBAUM

Senator METZENBAUM. Thank you very much, Senator Riegle.

I want to compliment you, Senator Riegle, and Senator Kerry as well. These are issues that have been before the Congress time and time again, and with no exception you have provided a leadership role. You have been supportive in your concern for protecting the Taxpayers' interest, and I think we all owe you an everlasting debt of gratitude.

Senator Kerry has certainly taken a very active role in exposing some of the problems that not only existed in yesterday, but that continue to exist at the RTC as we meet here today.

And of course Congresswoman Pat Schroeder is always in the forefront of every right issue in Congress, and we are so glad that she is over there and her voice is consistently being heard on issues of this kind.

I must admit, Mr. Chairman, that I do not have those same words of praise for the efforts and the actions of the administration to date.

I am a great supporter of the President of the United States, and have been a strong supporter, but I am not satisfied that those charged with the responsibility in the area of the RTC today, that their shoulder has been put to the wheel and has been as effective in protecting the public interest and being concerned about it. That particularly has to do with the issue of the statute of limitations and the retroactive aspects of it. They should have been with us and fighting on that issue, but instead they have been against it.

As you know, the Senate Conferees and the House Conferees will shortly meet with respect to the whole question of the budget and how much is going to be provided in order to bail out, to pay for some of the continuing problems in the savings and loan industry, as far as the RTC is concerned.

Now some of the most important testimony today will be about the serious failure of the RTC's Professional Liability Program which is supposed to sue malfeasant savings and loan officials.

The National Commission on Financial Institution Reform, a bipartisan panel, reported this July that 10 to 15 percent of the costs of bailout are due to culpable misfeasance. That is \$30 to \$50 billion.

Today's witnesses include three lawyers who used to work in the Professional Liability Section. They will tell us how the section was reduced to a shambles by a so-called "reorganization." Management began to dismantle the unit just as the statute of limitations and suits against hundreds of savings and loan officials were about to expire.

Let me give you an example of the chaos that the reorganization caused.

Four RTC lawyers in the Baton Rouge RTC office were notified in 1992 that the office would be closed in 4 months; that the head of the office would be moved to Washington, and the other three lawyers would be let go. The supervising lawyer quickly moved to Washington. Two other lawyers took private jobs immediately. That left one lawyer in charge of the investigation of 92 failed thrifts. Even his secretary left immediately, leaving him to make do with temporary secretaries.

Of course the workload is impossible, and the RTC in Washington had to know that. There were an estimated 30 or more potential defendants to be investigated at each of the 92 thrifts, and hundreds, or perhaps thousands, of transaction loans and appraisals to pursue at each savings and loan.

My staff asked the former RTC Baton Rouge lawyer what it was like to handle that workload alone for 4 months without even a permanent secretary while looking for another job. He answered by saying:

It was triage. We grabbed what was on fire at the time and put it out. We looked at the big transactions. We didn't look deeper. There wasn't enough time.

I want the American people to know that the 1992 reorganization of the RTC's Professional Liability Section made it impossible to investigate hundreds, possibly thousands, of potential cases, and to recover millions of dollars. Instead of recovering that money, we are left to ask the Taxpayers to pay up.

I also want the American people to know that the former directors and officers of failed savings and loans—and I think this is the most important part of my comment this morning—have friends in State houses around the country. Those State legislators have taken their side against the Taxpayers by passing bills to block suits by the RTC and FDIC to recover Taxpayers' money from negligent savings and loan operators.

The most egregious legislation went into effect on the first day of this month in Texas. It was enacted without opposition on an emergency basis that allowed it to bypass public review.

A week ago, The National Law Journal had an excellent article on this wave of State legislation. I have provided each Member of the committee with a copy. I urge you to read it.

The Texas law says that a director or an officer of a failed thrift or bank may not be sued for negligence "by the Federal Deposit In-

insurance Corporation, the Resolution Trust Corporation, or any other Federal banking regulatory agency" unless the director personally profited from the transaction.

If Texas voters are not outraged by that, then the rest of the country should be. A grossly disproportionate number of all failed RTC thrifts and potentially liable thrift officials can be found in Texas.

Let me again read from the July report of the Bipartisan National Commission on Financial Institution Reform on the causes of the savings and loan disaster:

The system was most out of control in Texas, which became a breeding ground for imprudent and abusive practices. The savings and loans it chartered were allowed to engage in high-risk activities virtually without limit and supervision and examination were essentially nonexistent for several years. It was no accident that 40 percent of all Taxpayer losses came from Texas savings and loans.

It is outrageous that the Federal Government and the Federal Taxpayer is providing Federal insurance to cover losses caused by negligent savings and loan operators in States which have enacted laws to shield those operators.

Those laws make a mockery of Congress' intent to keep the RTC's cost to innocent Taxpayers to a minimum. They are shameful laws. They are a testimony to the complete route of the RTC's Professional Liability Program.

I am grateful for this chance to hear from the rank and file of the RTC. These are dedicated people. These are courageous people—to hear from them how difficult it has been for them to protect the Taxpayers and get the word out.

As we are about to go forward with a new RTC management, I hope this hearing serves as a beacon for change.

Thank you.

Senator KERRY. [Presiding.] Thank you very much, Senator Metzenbaum.

Let me just say that you have really been extraordinarily supportive and vigilant on this, and we are very, very appreciative. This is about your third hearing. I think I have seen you here as a non-member of the committee, and I think it is a tribute to your efforts to create accountability.

Congresswoman, thank you for your patience. We have been a little interrupted here. We have a vote on right now. The Chairman is on his way to vote, as is Senator Sasser. They will be returning forthwith. So if we could start your testimony, hopefully they will be back and I will be able to get to vote without having to recess.

STATEMENT OF PATRICIA SCHROEDER, A REPRESENTATIVE IN THE CONGRESS OF THE UNITED STATES, FROM THE FIRST DISTRICT OF THE STATE OF COLORADO

Representative SCHROEDER. Thank you very much, Senator. I want to thank the whole committee for allowing me to be here and for focusing on this.

I am going to ask unanimous consent to place my statement in the record, because this is a hearing from the heroes of the day, from the people who have had the courage to come here and, in the bright lights, tell us what is wrong with the Resolution Trust Corporation.

Everybody knows that there is something wrong. Everybody smells a rat. We could visit every single office in America and waste would jump out at you. You have to have people who have a lot of courage and who are willing to come forward to talk about it, or you are never going to find it.

Obviously the two people that I am very proud of are Bruce Pederson and Jackie Taylor who are from Colorado, who testified in front of this committee before. What their great "crime" is, according to the Resolution Trust Corporation, is that they raised some questions about the Professional Liability Section.

We all know that there were legitimate questions that should have been raised about that.

They have worked very closely with my office. They have cooperated with the General Accounting Office. They have cooperated with the Inspector General.

But let me tell you how they have been treated: Since they first raised the questions, instead of the questions being dealt with, they were dealt with—they were demoted; they were isolated in a separate building; they were threatened with transfers to Kansas City; and most recently, which I think is really egregious, RTC broke into Bruce Pederson's computer and copied all his files.

That jeopardizes communications with the House and Senate, or anybody else.

There is a very clear message that went out to every other employee of the RTC in my region, and that is: Don't you dare blow the whistle on waste or fraud.

The big problem is, we still have not seen anything happen from this. I have asked the Department of Treasury to investigate the break-in, and in August they said that, oh, this was not retaliation. I do not know how they could say that. It does not pass the giggle test.

I am still waiting for the Inspector General's report. Maybe the Senate has more clout than we do, but we certainly have not been able to get the Inspector General's report, which is long overdue.

I have written the Justice Department and asked why in the world they are not concerned about this computer break-in. We have yet to hear from them, either. So maybe this committee hearing today with these very, very courageous people, can help do it.

I have worked to protect whistleblowers from retaliation for a very long time. I do not know how we do oversight without people who can talk to us. Unfortunately, there is a mentality in the West about rumps together horns out. That often is how every agency wants to approach any inquiries or criticism. It is like: Out of our way! We will do what we want!

Therefore, whistleblowers end up isolated and unprotected. We are trying very hard now in the Congress on our side to pass whistleblower protection for employees in Federal corporations like the RTC. Unfortunately, every time you pass one whistleblower act, they find some new form of retaliation. So I just hope we can move along and get that done.

Like many of you, I was very interested in information that whistleblowers had told me. I have got a whole file of stuff. We would be happy to share it with you. These are documents about the contracts that were signed, about personnel decisions that were made,

about fee bills, about people who are going to make the most money out of this—law firms, and how they hire former RTC employees, or have friends that are on the inside.

I think the Taxpayers are really sick about this. If we are going to reinvent Government, we had first better clean up Government. We had better be sure it is responsive, and put this incredible thing behind us.

I thank you for your sincere interest in this, for calling these hearings, and let me put the rest of my testimony in the record.

The witnesses who have been there and who have been through the pain are the heroes of this hearing, and they should be the ones who are heard from.

Senator KERRY. Congresswoman, thank you very much. Without objection, your full testimony has been placed in the record.

Thank you particularly for your supportive efforts and leadership on this issue. It is very helpful, obviously. I am glad you came and celebrated the appearances of those from Colorado, who indeed deserve congratulations.

Thank you, very much.

Representative SCHROEDER. Thank you.

Senator KERRY. What I will do is ask the Members, all of them, of the panel who are going to testify all together on one panel, to come forward and take your places.

While you do that, I will recess temporarily while I go over to vote. As soon as Senator Riegle reappears, he will reconvene and start the testimony.

We will stand in recess while you take your places.

[Recess.]

The CHAIRMAN. [Presiding.] The committee will come to order.

I thank everyone for their indulgence as we had to adjourn briefly for the vote on the Senate Floor.

Let me call on Senator Murray for any comments she may want to make before I swear in the witnesses and we begin with their testimony.

Senator Murray.

OPENING STATEMENT OF SENATOR PATTY MURRAY

Senator MURRAY. Thank you, Mr. Chairman.

I apologize for being late. I was asked to preside this morning, and I just got out of the Chair.

I appreciate your holding this hearing, Mr. Chairman. I think everyone knows how strongly I feel about reforming the RTC. As a new Member of this committee, I reluctantly voted for the funding of the RTC. I am not sure everyone knows how strongly I feel that the RTC should go out of business and we should move on as quickly as possible.

This mess should be straightened out, and we should move on. But until that time, the Resolution Trust Corporation must be an organization that we the Taxpayers of this Country can be proud of and trust.

I have heard many stories of whistleblowers at the RTC. I happen to believe in underdogs and I believe that one person can make a difference. So you should know, up and down this long panel of

witnesses, that your public service is recognized by Congress, and I appreciate your coming today.

The CHAIRMAN. Thank you very much, Senator Murray. I know I should acknowledge the strong concerns you have expressed both in this committee previously and to me as Chairman when we were working on the legislation earlier this year, and about the need to move ahead with precisely this kind of inquiry. So we are doing that today. But I appreciate you for that leadership, along with Senator Kerry, that I have acknowledged earlier.

Let me now introduce our witnesses one by one. After I have introduced them, I am going to ask them each then to make their presentation in the order in which I introduce them. Once I have introduced all of you, I am going to ask you all to stand together and take the oath, and I will do that at the end of these introductions.

Our first witness is Mr. Michael Koszola, who is an Agent in the RTC Inspector General's Office in Chicago, IL.

Mr. Thomas O'Bryon, who was an asset manager for the RTC's Costa Mesa, CA, office. He is now self-employed and resides in Eagle, CO.

Mr. James Romer, who served as the Contracting Officer in the Dallas, TX, office of the RTC. He has since retired and now resides in Carrollton, TX. As has been noted earlier, Mr. Romer is also the brother of the Governor of Colorado, Buddy Romer.

Ms. Debbie Sherrill is the Claims Settlement Agent in the Atlanta, GA, office of the RTC. She is responsible for the reviewing of contracts to ensure that the requested job has actually been completed.

Mr. William Henderson, who is an FDIC employee on assignment to the RTC and handles documentation on legal contracting for the Atlanta, GA, office of the RTC.

And, Ms. Deanna Smith, who served as an Administrative Assistant in the Legal Division for the Atlanta, GA, office of the RTC, and is currently with FDIC's Atlanta office. She was responsible for detecting waste and fraud in RTC vouchers.

Then, Ms. Annette LePique, who is the Section Chief of the Affordable Housing Unit in the Newport Beach, CA, office of the RTC.

Ms. Sandra Crisman, who is also located in the Newport Beach office of the RTC. She is the Department head of the Contracts Division.

Mr. Hans Mangelsdorf, who is the Senior Property Manager in the RTC's Newport Beach, CA, office. He was the first person hired by the RTC in California to handle its real estate asset disposition program.

Mr. Thomas Burnside, who was a senior attorney in the RTC's Professional Liability section, and was located in the Dallas office of the RTC. Mr. Burnside is now in private practice in St. Louis, MO.

Then, Mr. Bruce Pederson, who is from the RTC's Denver office. Mr. Pederson gave very important testimony to this committee previously in August 1992, during the review of the RTC's reorganization. In June 1993, Mr. Pederson was recognized as one of four recipients of the Cavallo Prize for Moral Courage. This award is

given annually to whistleblowers in either the public or the private sector, and we very much welcome him back and look forward to his testimony.

Ms. Jackie Taylor, from the RTC's Denver, CO, office who also testified before this committee in August 1992, again very importantly, to discuss the RTC's reorganization. We appreciated that then, as we do today. She also was recognized as one of the four individuals who were granted the Cavallo Prize for Moral Courage. We welcome her back before the committee today and look forward to what she will have to say to us.

Finally, Mr. John Waechter is located in the Denver office of the RTC and was the Computer Services Specialist that was instructed to conduct a search of Bruce Pederson's office computer earlier this year.

This is a very impressive and compelling list of witnesses. You have heard other Members express already their appreciation of your coming forward and being here today.

Let me ask all of you to stand now, if I may, and I would like you, once you are standing, to raise your right hands. I would like each of you to respond in the affirmative at the end of this question: Do you swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so Help you, God?

[The witnesses answer affirmatively in unison.]

The CHAIRMAN. Very good. Thank you, and be seated.

Mr. Koszola, we are going to start with you. We welcome you, and we are going to make your full statement a part of the record. We would like to hear from you now.

TESTIMONY OF MICHAEL J. KOSZOLA, RESOLUTION TRUST CORPORATION, IG AGENT, CHICAGO, IL

Mr. KOSZOLA. Thank you, Mr. Chairman, and Members—

The CHAIRMAN. Let me just do this so we start our procedure. These mikes can move right around. I would like you to get the mike right in front of the person speaking. Just pull it. It will move. So you can be well heard. I want you to be heard in the back of the room.

You may proceed.

Mr. KOSZOLA. Thank you.

Mr. Chairman, and Members, my name is Michael J. Koszola. I am pleased to have the opportunity to testify before you today. I have been a Federal Enforcement Officer for nearly 10 years. I have worked as a Special Agent for the U.S. Customs Service for 5 years. Since December 1991, I have been employed as a Special Agent for the Office of Inspector General of the Resolution Trust Corporation.

When I first joined the IG's office of the RTC, I viewed it as an opportunity to help uncover waste of the Taxpayers' dollars. Unfortunately, I found that the RTC/OIG is not doing its job.

In fact, the RTC/IG has spent more time covering up or committing fraud than it ever spent investigating it. In today's testimony I will describe how the RTC/IG engaged in rewriting reports, misleading Congress, covering up misconduct, shredding incriminating documents, and grossly distorting agency investigative priorities.

I witnessed cases in which agents at the RTC/OIG were instructed to rewrite reports to have them read a particular way that would be less likely to require further investigation.

Investigative reports were altered in order to avoid embarrassing or politically sensitive disclosures. I was personally told by Clark Blight, Assistant Inspector General for Investigations, that it was the function of the Headquarters RTC/OIG to revise reports to outside agencies, including the GAO, the Senate, and House Congressional Committees, in order to make sure the reports were favorable.

At that time, Blight was in the process of revising one such report to Congressman Gonzalez, Chairman of the House Banking Committee, to reflect a more favorable outcome.

Another time, top RTC/OIG officials were sent to the Denver Regional Office in order to assist other special agents in writing a report of investigation involving the Bush family.

The RTC/OIG attempted to mislead Congress in other ways, as well.

The CHAIRMAN. Let me just ask you at this point, before you go any further. Those are very important statements you have just made. Have you retained in your records copies of these initial documents, or findings, or the work that you did that was then later changed, or not accepted in the form that you had prepared it? Do you still have those materials?

Mr. KOSZOLA. Sir, some of those files—all of my files, I was basically kicked out of the office, and I may have some information, but a lot of this I witnessed firsthand—all of it. I mean, I had that conversation with Clark Blight last year.

The CHAIRMAN. All right. Well, we will go through that. I will also say to the rest of you that, in situations that may be similar to what he has just described, if you have documents or written materials that would illustrate and substantiate the points you are making, I want to make sure we ask for and get all that may be available. So why do you not continue.

Mr. KOSZOLA. In fact, generation of make-work reports was a common practice in the RTC. I was personally assigned three cases that were previously closed to which new case numbers were assigned, despite the fact that there was no new evidence to warrant reopening the investigations. I brought this to the attention of management and was told the RTC/OIG was trying to keep Congress happy in order to secure additional funding.

I found instances in which we at the IG's office were told not to tell the truth to the General Accounting Office. Indeed, I was specifically instructed by my supervisors at the IG's office, Daniel Sherry and George Sullivan in 1992, not to provide information to the GAO concerning RTC employees who had criminal histories.

I was further instructed not to say anything about the thefts in the building. The IG did not want to open up a case on the thefts, and it did not want the GAO doing so, either.

I learned of the political manipulation of investigations. Management would send agents to look over the shoulders of other agents when they were reviewing S&L matters that might pertain to political figures.

Before the Presidential election in 1992, the RTC/OIG was actively seeking criminal or other negative information from special agents on the Clinton family.

At some time in February 1993, an anonymous male telephone caller stated that Patricia Patterson was buying RTC properties in Dallas as a straw purchaser for Albert Casey, the Chairman of the RTC. Ms. Patterson was allegedly Mr. Casey's girlfriend.

The caller said he was an employee of the RTC and had reported this information to the RTC/OIG in Dallas, TX. The caller stated that, to his knowledge, no investigation was initiated by the RTC/OIG because no auditors or special agents reviewed records remaining at the Property Sales Department. I sent my supervisor, Mr. George Sullivan, a memo regarding this information. To my knowledge, no investigation was ever initiated.

Another investigation I tried to initiate involved reports of overbilling and sleeping on the job by employees of another RTC contractor, Coopers & Lybrand. I saw Coopers & Lybrand accountants hired by the RTC perform little or no work at exorbitant cost. I saw accountants sitting and reading nongovernment literature and being paid for it by the RTC. When I investigated this, I was told that their contract permitted them to sit there and read when there was no work to do. It was an obvious ripoff.

When I tried to do something about it, I was told by my supervisor, George Sullivan, not to bother with it. The RTC employee who approved the payments to Coopers & Lybrand is now employed by them.

An incident which epitomized for me the blatant disregard for the law in the IG's office occurred on August 24, 1992. I was on detail in DC shortly after Gerald Jacobs, General Counsel of the RTC, had resigned under a cloud of allegations concerning personal and official impropriety—despite the fact that an Inspector General's report said that it found no information showing any impropriety with respect to Jacobs' dealing with a failed Arizona S&L.

I was working at the IG headquarters in Roslyn, VA, when I overheard Lew Sherman, Deputy Inspector General for Investigations, and Clark Blight, the Assistant Inspector General for Investigations, laughing and making jokes about how they had taken care of the Jacobs' case by shredding documents all weekend with the help of several other agents. They joked how they had needed a second shredder from another office to handle all the shredding. Shredding documents following the conclusion of an investigation is not unusual. However, the circumstances of this shredding operation raises a number of questions.

What was the hurry? Why did it occur over a weekend? Why did it take an entire weekend for two Assistant IG's and three Special Agents with two shredders to carry out a routine shredding? The three Special Agents received letters of exemplary service for their expedient response and professionalism in conducting the Jacobs' investigation.

On April 19, 1993, I was placed on indefinite administrative leave pending investigation into allegations of which I still have not been officially informed.

On April 5, 1993, 2 weeks before I was placed on administrative leave, I was ordered by my supervisor, George Sullivan, to discontinue any contact with the Senate Banking Committee.

Since being placed on leave, I have received threatening phone calls. I alerted the police after each call, and was able to tape one of the calls which consists of nothing but the sound of a machine gun. On another call the caller stated something to the effect: We're going to get you.

For the past several months I have not been permitted to work at all by the RTC. The Taxpayers are still paying my salary. I am ordered to come to work each Wednesday morning, and then ordered to go home as soon as I arrive.

I have worked for a number of Federal agencies but never have I seen an agency managed so poorly and with such profound consequences for waste, fraud, and abuse as the RTC.

The CHAIRMAN. That is a very powerful statement.

Let me ask you this. What is the length of time of your Government service from when you first started?

Mr. KOSZOLA. Ten years. Over 10 years.

The CHAIRMAN. And what would your record be over that 10 years in terms of your conduct, your ratings, your performance generally?

Mr. KOSZOLA. Overall, very good.

The CHAIRMAN. And prior to joining the Government? Can you just give me a little sketch as to your background?

Mr. KOSZOLA. I went to school and paid for my own tuition. I worked part-time/full-time at banking brokerage houses and insurance companies.

The CHAIRMAN. You have a personal record that essentially is without any blemish? Is that a fair statement?

Mr. KOSZOLA. Unless you are talking to a corrupt law enforcement official or some other manager that I worked under.

The CHAIRMAN. No, but with respect to your conduct and the way your conduct has been assessed by others and just your record, you come in with a clean record, do you not?

Mr. KOSZOLA. Yes.

The CHAIRMAN. I wanted to draw that out, because I think when a person, a citizen who also is a Government employee, sees the things and hears the things that you did, I think you have an obligation to do exactly what you have done.

I think your obligation is to not—is, rather than looking the other way or, you know, just going along with practices that you saw that were improper, I think your direct obligation is to do exactly what you are doing today. That is, to come here under oath, tell us the truth as you understand it to be, and as others here will do today, and to put the bright light on practices that you've seen that you know and believe to be improper and incorrect.

So I want the record to clearly show that what you are doing here today is a very important public service, and it is appreciated by this committee.

I want to make sure that we take whatever steps we can to put an end to any harassment or intimidation in any way, shape, or form that is being directed at you. We have a Justice Department and an Attorney General in which I have confidence who I think

would be very distressed to hear what you have said, and we intend to so inform her of what you have said in terms of some of these threatening activities that are going on at the present time, because that is not America. It should not be America.

Does anybody else want to make just a brief comment before I go to the next witness?

[No response.]

Next is Mr. Thomas O'Bryon, who as I said earlier was an Assets Manager for the RTC's Costa Mesa, CA, office.

Mr. O'Bryon, we would like to hear from you now.

TESTIMONY OF THOMAS O'BRYON, RESOLUTION TRUST CORPORATION [FORMER EMPLOYEE], COSTA MESA, CA

Mr. O'BRYON. Good morning, Senators, and thank you for letting me be here today.

In the 1980's I worked with a lot of the S&L's in the Pacific Northwest trying to deal with a lot of the non-earning asset problems, much in the same way that the RTC is trying to deal with the assets of failed institutions.

In 1990 when I heard that the RTC was opening an office in Costa Mesa, CA, I decided to apply, seeing as how this was my background.

Senator KERRY. [Presiding.] Do you want to give us just a little sense of that background?

Mr. O'BRYON. Basically what I would do would be to go into an institution that was having—

Senator KERRY. What are you trained as, and how long have you worked at it?

Mr. O'BRYON. I am sorry, sir?

Senator KERRY. What are you trained as? And how long have you worked in that capacity?

Mr. O'BRYON. I have been in the real estate finance mortgage industry since about 1976. That later translated into working as a consultant for savings and loans, actually all over the country, but specifically in the Pacific Northwest and in California.

I was involved in handling what are called REO Disposition Transactions, which is Real Estate Owned, foreclosed assets, and the like; and I have handled several billion dollars worth of assets during the 1980's for failed—or savings and loans that were in financial trouble and trying to save themselves before the RTC was formed.

I was offered a position in June 1990, with the Costa Mesa RTC office to come in and try to deal with the non-earning asset problems, but I absolutely became fed up and disgusted after about a year. I left.

I decided that I could possibly work with individuals who were trying to buy assets from the S&L's, because I certainly was not having any luck selling property for the RTC while I was there, as I had brought in offers of in excess of \$50 million within the first month of my accepting the job at the RTC. Those properties were still on the books over a year later when I left the RTC.

The management of the RTC can only be described as "crisis management" from where I sit. During my tenure there and my subsequent dealings with the RTC, I experienced fits of rage, rude-

ness, yelling, sexual innuendo, and generally demeaning and harassing behaviors. This was done by senior staff as well as other staff.

Many people were threatened with firing, as was I, on more than one occasion. These are fear tactics. Fear tactics don't have any place in management, especially when you are trying to get a job done, and especially with one that has the magnitude of the RTC.

From time to time, the RTC in Washington or the Denver office would request reports of information having to do with real estate. I was the individual that those requests would come to. There have been many times those requests would take 2 weeks to get to me from Washington.

By the time the request got to me, many times that request was due the day before I received it. Many of these reports were going to take 4, 5, 6, 7 days to complete. I had one day to complete them. There was absolutely no way in the world that I could complete a report of the magnitude that I was asked for in one day. So, as a result, the report would go in incomplete.

I would refuse to put my name on it saying that this was 100 percent accurate. In fact, I would put statements on there saying that I felt that this information was 60 percent accurate, or 50 percent, or whatever it might be. I was told that if I did not remove those statements and sign it saying it was 100 percent complete, I would be fired. This was ridiculous. If I signed it and sent it up saying it was correct, I am going to get in trouble with Washington for sending in fraudulent information. If I do not put my name on it, I am going to get fired. This is an untenable situation. Not only was I in this situation, but I know that many of the people at this table were placed in that kind of a compromising position.

After about 3 or 4 months in the RTC, I was asked to be involved with the REOIS program, the acronym called REOIS stands for Real Estate Owned Inventory System. This was a precursor to the system that is now in place called "REOMS," which is the Real Estate Owned Management System.

The REOIS was a temporary system just to get by until REOMS could come on line. This system was flawed from the beginning. Too many people from too many areas of the RTC tried to be involved in the design and absolutely knew nothing about computer design and what a computer could or could not do.

As I was involved in the implementation and the setup of the RIO system on the West Coast, I was asked to come back to Washington to help them put controls in place that would make the system more effective.

At the same time I came back here, I asked to maybe be a part of the team that was designing the REOM system. I was not consulted. I was not asked to be a part. In fact, I was told that anyone having to do with the RIO system would not be allowed to be involved with REOMS.

The REOM system, ladies and gentlemen, is going to cost the American Taxpayers in excess of \$100 million. It never had to cost that much. It could have cost a fraction of that. But because they would not consult with people who really knew what they were doing, because management had their own agenda on how it was

going to be put together and what was going to be done with it, the American Taxpayer is really taking it in the shorts.

As to the inappropriate behavior, more than what I have just said, I am currently a witness in a Government case that involves inappropriate behavior of a sexual nature, abuse of position by attempting to inappropriately influence subordinate-level employees, abuse of position by inappropriately accessing files, and abuse of position by attempting to harm other employees' careers.

I do not think it would be appropriate to discuss the details, but I am involved in a lot of the information that hopefully will keep some of the upper management out of the RTC since they have been dismissed.

As to the subject of waste and what Senator Kerry was saying earlier, the waste, to put it in as graphic terms as I can, I mentioned the RIO system and the REOM system: \$100 million for a single computer system that does not work.

When I was taken off of the RIO system because I kept bringing these issues to light, I was given a number of apartment buildings in Phoenix, AZ—6, to be exact. The total value of these apartments were about \$9 million. When I took these over and I started investigating, I found \$1.4 million sitting in checking accounts earning absolutely no interest for the Taxpayers. That money had been sitting there for over 9 months. Now that money could have—the interest that that money could have earned would have paid my salary and a number of my colleagues' salaries.

I was constantly told that we did not have the budget to do what we needed to do. The reason we did not have the budget was because management was not paying attention. Management was not doing what FIRREA, RTC's legislation, calls for us to do—which is, to keep all the moneys in interest-bearing accounts.

When I asked the manager who had been taking care of this why he did it, why he did not move the money to the Department of Accounting, he said that: Because if I have to write a case study, the paperwork is going to be ridiculous just to be able to fix a water pump or a pipeline or whatever it might be, and I don't want to have to deal with all that paperwork.

I have had two contacts with the IG's office where I have filed two complaints. One was the waste of the example I just gave you, that of money sitting in non-interest-bearing accounts. The other was, I have currently notified the IG that there is an individual currently working for the RTC who is illegally buying properties from the RTC using front men. I know of this because I was asked by one of the front men if I wanted to participate. They did not know that I used to be an RTC employee, and they did not know of my involvement in this hearing, nor in the case I am testifying in out in California next month.

To get into the real waste, however, let us talk about auctions and sales. While I was at the RTC, as I said, I brought in \$53 million worth of offers on three different apartment buildings in the first month I was there. I was told that they were not assets that I was handling, and therefore it looked inappropriate for me to be trying to get these properties sold. What was my vested interest in doing this?

I went to my boss and I said, lookit, my vested interest is, this is my job. This is what we are supposed to be doing. Thirteen months later, those properties were still on the books. I found out that just last month one of those properties finally went to sale, and it went to sale for \$10 million less than the offer I had presented back in 1990. That is waste, and that is a lot of money.

A lot of the assets that had good offers coming in on them would, from time to time, just subsequently be pulled to be put into an auction because somebody wanted a good looking, high profile piece of property in that action.

You would have a piece of property that had a good, solid contract of sale pending, and they would pull it; put it in the auction; the sale would take place at the auction for a substantially reduced price, and you would then be left with the loss that never should have taken place. But this was a common occurrence. This again has cost the Taxpayers not millions, not tens of millions, not hundreds of millions, but billions of dollars.

One specific example of another piece of property that I——

The CHAIRMAN. [Presiding.] Let me just stop you there for a minute and ask you, as you recite this, and as you try to figure out in your own mind, as you were doing at the time, how could things be so badly managed? How could so much money be wasted and squandered?

I would be interested in knowing, as you were thinking all this through, the degree to which you were deciding that it was just out and out incompetence. I mean, managers who did not know what they were doing, versus something beyond that, somebody who was deliberately in effect manipulating the process, or seeing to it that either things were steered a certain way, or in some fashion just, for whatever the purposes, making sure that things did not work right?

How would you divide it generally speaking between just out and out incompetence, and somebody that was venal or had some other angle they were shooting here?

Mr. O'BRYON. I would have to say that probably 50 percent could be considered incompetence on the part of middle management; and the other 50 percent I would have to say was deliberate, people who said: We need a high-profile auction. We have got to make ourselves look good, because we looked so bad. We are in a fish bowl.

We want to put together an auction, and we want to sell hundreds of millions of dollars of properties, all high profile, good looking stuff so people can see we are doing our job.

Now I was told that specifically by the Washington sales office on one of my trips back here when I was dealing with the real estate inventory system. They came right out and said it. They made no bones about it. I said, yes, but it does not make sense to pull this property out, lose \$10 million just for the sake of looking good, and they said "\$10 million is nothing in the overall scheme of things."

Well, Senator, when I took over the REOI system in August 1990, there were 55,000 pieces of property within the RTC. There have subsequently been many tens of thousands more since then.

The CHAIRMAN. I am going to ask you to just stop at this point, because we are finishing a vote and we are on the second bells. But

I also—I do not want you to say this until we get some of the other Members back in here. I want Senator Metzenbaum to hear this, who I think is en route back, and I want the others to hear this as well.

What you are saying is very important. We will take the time that it takes if we have to be here all day, or however long it takes. I want to go through this carefully and thoroughly.

So if I can ask your indulgence, I am going to put the committee into recess now briefly. When Senator Kerry and the others come back we can go ahead and resume, but I want to get the Members here as you go through this next part, which is very important.

The committee stands briefly in recess.

[Recess.]

Senator KERRY. [Presiding.] Mr. O'Bryon, you are still testifying?

Mr. O'BRYON. Yes, sir.

Senator KERRY. Go ahead.

Mr. O'BRYON. I was getting ready to explain to Senator Riegle that we had in 1990, when I took over the real estate owned inventory system at the RTC, 55,000 pieces of property listed in the inventory. Some of those were listed as "sold." Many of them were listed as "available," but the majority of them were listed in some sort of a "pending" status of litigation or problems, whether they be environmental, wetlands, and what have you.

I testified that in 6 apartment buildings, we found \$1.4 million in cash not earning a penny's worth of interest. That is 6 out of 55,000.

I have another example of one R&D building, a research and development warehouse building in Colorado Springs, CO, that in 1991 sold at auction for \$12.50 a square foot. Within one year, the purchaser syndicated that property for \$50 a square foot. One year. He managed to make \$4.5 million profit on one piece of property. So far we have talked about 7 pieces of property accounting for literally millions and millions of dollars of Taxpayers money that has been wasted and lost.

If it was one or two pieces of property that this happened on a rare occasion, it would be one thing; but this is happening on hundreds and thousands of pieces of property accounting for billions of dollars of waste.

People who talk about the RTC costing the American Taxpayers \$150–\$170 billion? I defy them to go out and really do the honest accounting because, Senators, it is going to cost the American Taxpayers several hundreds of billions, if not trillions, of dollars.

Now it is easy to criticize, and it is much more difficult to produce workable solutions. I am here to not only talk about the problems, but I am also here to try and help with any of the solutions that I can.

Thank you for your time.

Senator KERRY. Thank you very much, Mr. O'Bryon.

Mr. Romer.

TESTIMONY OF JAMES ROMER, RESOLUTION TRUST CORPORATION, CONTRACTING OFFICER [FORMER EMPLOYEE], DALLAS, TX

Mr. ROMER. Mr. Chairman and Members of the committee, it is an honor and a privilege to address this committee regarding contracting irregularities, management improprieties, contractor collusion, and conflicts of interest at the Dallas office of the RTC during the early years of its existence.

The testimony I am about to give is based on first-hand knowledge and reflects my personal experiences while employed as a contract specialist in the Dallas Metroplex Consolidated Office of RTC.

Senator KERRY. What years were those?

Mr. ROMER. 1990, 1991, 1992, and 1993.

Senator KERRY. So you have just left there?

Mr. ROMER. Yes. I have just been dismissed.

Senator KERRY. You were dismissed?

Mr. ROMER. Yes.

Senator KERRY. What was the cause of your dismissal, if you know?

Mr. ROMER. Irregularities—Mistakes on the time sheet. I normally go to work at 6 o'clock in the morning and work on Saturdays, and probably put in 45 hours a week, and sometimes I sign up for leave ahead of time to go to a meeting or something for an hour or two, and I am too busy that day and I might go the next day, so my time sheet was not accurate. So that was an excuse to let me go.

Senator KERRY. And this occurred after you had raised these questions publicly, or not?

Mr. ROMER. Oh, yes. I mean, yes, they had personally had the IG tail me for 14 months to find these "irregularities."

Just as one example, they, in the testimony I left my office—I normally go to lunch at 11 o'clock, after I go in at 6 a.m. I left the office at 10:28 a.m. and had an IG agent timing when my vehicle left, and I met two people at the Infomart down the street, which was a sting operation. They had invited me over and offered me a big contract to go overseas on an airplane because I had been a pilot for 50 years, and that's my interest, and I told them, no, I couldn't do that because they were offbase on what they were trying to ask me to do, and I was gone an hour and 18 minutes, and our lunch hour is only 45 minutes.

But I would estimate they spent \$100,000 in 14 months to try to find enough reason for me to go.

Senator KERRY. OK. Why do you not go ahead with your testimony.

Mr. ROMER. Prior to working for RTC, I had over 30 years' experience in the area of—

Senator KERRY. Pull the mike a little closer to you, Mr. Romer.

Mr. ROMER. Prior to working for the RTC, I had over 30 years' experience in the areas of real estate brokerage, appraisals, construction, business development, and computer applications.

Computer applications was business planning and applying computer technology, which today you call process re-engineering, is what I have been doing for 30 years.

I have owned several businesses and have been directly supervising up to 80 employees.

I began employment at RTC in February 1990, approximately 4 months after the Dallas office was opened. My first assignment at RTC was to organize and staff a contractor registration department for the Southwest Regional Office, which was also headquartered in Dallas.

I established an organization of six people, developed registration procedures, designed a computerized data base, and supervised the registration of the first 12,000 contractors in Texas.

My team also completed the solicitation and award of 75 contracts. As a result of this effort, I received the first gold star—the first Gold Star Achievement Award granted in the Southwest Region.

However, all is not well in the co-located Dallas Metroplex Consolidated Office, especially in the Contracting Department.

First, contracting was not and could not operate objectively since it was organizationally reporting directly to, and was fully responsible to, the Asset Management Department whose mission was to dispose of assets. The contracting managers were essentially told what to do and who to contract with. Contracting was little more than the conveyor's of paper that documented and validated decisions that Asset Management had already made.

For most of 1990 and 1991, the concept of fair and open competition was a joke. This was especially true for minority contractors, since most asset managers were predisposed to conclude that minority contractors were not capable of performing asset-related work.

Even though FIRREA had dictated the maximum-use criteria, senior management in Dallas would not permit contract registration reports to reflect minority identification even though I had designed the data base to do so.

Second, the general hiring policy at the time was that anyone that had a FAR, a Federal Acquisition Regulation background, was not suitable for consideration to be hired in the Contracting Department. The reasoning was that, since RTC was not required to operate under FAR rules, it would be counterproductive to have people around with that kind of discipline.

People with FADA, the Federal Asset Disposition Agency, or banking backgrounds, the good buddies, many who were involved in creating the savings and loan crisis, were hired with abandon.

Third, the contracting operating environment clearly was driven by time pressures and deadlines dictated by Senior Asset managers. Contract specialists were fearful of losing their jobs if a contract, especially a SAMDA, was not awarded by the designated date set by Asset Management.

No matter if there were loopholes that permitted the contract to operate with little or no controls. I will recite the pillar incident.

My first insight into the buddy arrangement for awarding contracts came in October, 1990. During that month, Solicitation 761-9966-90139-140, 141, 142, 143, and 144 were issued to secure contractors to perform computer corrections to the Assets at six locations.

I was the contract specialist assigned to work the solicitation. One firm was the lowest bidder and the best qualified on all six of the solicitations. I performed the required verification and recommended to the Asset Department that the contract be awarded to the low bidder.

Assets rejected the recommendation and requested that four of the contracts be awarded to the lowest bidder and two contracts be awarded to the second-ranked bidder whose chairman was friends with several of the senior staff of RTC.

In reviewing and checking the required certifications pursuant to FIRREA and 12 CFR 1606, there were obvious conflicts with the second-ranked bidder.

The Chairman and Chief Executive Officer of the second-ranked firm was currently employed as a Senior Vice President of a savings and loan and had not disclosed this employment as required by RTC Regulations.

During my inquiry into the information on the second-ranked firm's certifications, I physically went to the S&L loan office and obtained a letter from the personnel department confirming the employment of the Senior Vice President, and also obtained a copy of the institution's financial statement which listed the bidder's chairman as Senior Vice President. These were obvious conflicts.

Finally, in response to my protests and refusal to award the two contracts to the second-ranked firm, I was given permission to award all six contracts to the lowest bidder as it should be. However, the senior manager at the Dallas Metroplex Consolidated Office had decided that the second-ranked firm would be awarded other business.

A major SAMDA contract was awarded to this firm, in spite of independent reports from the Investigations Department validating the conflicts of interest created by the firm's chairman working for a savings and loan. These reports were sent to the Senior Asset Manager, the Senior Contract Manager, and the Ethics Officer in the Dallas office.

The power of SAMDA: An illustration of the kind of unethical practices used by some SAMDA contractors is summarized in my memorandum dated July 9, 1991, which is attachment 2, which I will turn in.

In the memo to the assistant director of contracts at the Dallas Metroplex Consolidated Office, the asset management contractor is demanding a nonrefundable option fee of \$3,000 to process a sales contract for the purchase of property. My memorandum was not responded to, nor any action taken on, this petition.

A second illustration of the awesome power of the SAMDA Contractor is provided in a letter from Mr. Mike Doan, attachment No. 3, dated July 16, 1991.

In the letter, Mr. Doan states that not only is the SAMDA Contractor arbitrarily deciding who gets discounted deals on the properties being sold, but the SAMDA contractor bragged about the fact that it would do no good to complain to the RTC.

In fact, in the past, complaints have been sent to former CEO's, but the purchaser still has to come back and deal with the SAMDA. This is the SAMDA which was number two in the bid I turned down.

Such impunity was widespread, and it was one of the reasons why many subcontractors and buyers became discouraged and stopped trying to do business with the RTC.

The power of the contractor over friendly RTC's senior management is further illustrated when you consider a letter that this same SAMDA contractor wrote, dated July 1, 1991, attachment No. 4, to the Dallas Regional Director.

The preliminary internal memorandum that I had written on June 25, 1991 [attachment 5], detailing wrong-doing, was already in the hands of the contractor to the extent that they had heard about the contents from several sources at the RTC's regional office and the Metroplex Consolidated Office.

It is probably just a strange coincidence that the special assistant to the then-regional director was also a former supervisor of the Chairman of the SAMDA Contractor who just happens to be in the direct pipeline for receiving RTC internal information.

Retribution measures: This is in November 1990. Suddenly, without formal explanation, I was relieved as contracting team leader and assigned duties as a librarian and FOIA response writer.

While I was hired as an LG-14 Contract Specialist and performed at that level, my new duties were those normally given to an LG-9 or LG-11 Apprentice Specialist.

As an illustration of how deeply ingrained this vindictiveness was with the assistant director of contracts and his two direct reports, I refer you to my memorandum dated April 8, 1992 [attachment 6], which addresses two shortcomings of RTC's information systems. As you are aware, timely information is a cornerstone of RTC being able to do business.

I observed that huge amounts of space was being used to store documents, and many hours of clerical time was spent retrieving documents. Also, many proposals, contracts, and other important documents are submitted to RTC by FAX. Because of the time zone differences, many of the FAX'd documents came into automatic machines during off-duty hours.

There were times when I arrived early in the morning, as I usually came in at 6 a.m., that FAX documents were literally strewn on the floor because the receiver box had overflowed. I suggested using a new imaging software and computer FAX board, since each contract specialist has a terminal.

A significant savings would result from reducing file storage space, document retrieval time, minimizing lost files, reducing lost time of standing at FAX machines, and having a chronological record of the FAX messages sent and received. The savings of the system was estimated to pay for the system in 90 days or less.

My immediate management would neither discuss the feasibility of these improvements, nor forward the analysis to the experts in information systems.

Recommendation: In closing, Mr. Chairman, I would like to state that there are still many dedicated, hardworking people within RTC who could do a much better job of restoring the confidence and resolving the crisis if, number one, the hard-core senior management at the field offices and headquarters, who were responsible for the problems that I have addressed, were removed.

They do not believe that the new initiatives that Secretary Bentzen introduced will work, since they have an inherent vested interest in maintaining the old system. After all, it was the system—it was they who designed the old system, and to make any new-system work would be absolute proof that their former approach was wrong. This is tantamount to self-incrimination, and no one can expect them to put a diligent effort into such a cause.

Second, contracting should be placed on an equal basis with asset management, operations, and legal.

Since the majority of the RTC's business is done by outside contracts an objective, independent contracting group is essential.

This is a fundamental management flaw to have the contracting officers identified as organizational second-class citizens.

The pressure from over-zealous managers who are quick to let it be known that they control your paycheck can subvert even the most objective contracting officers.

Again I thank you for the opportunity to appear before this committee.

The CHAIRMAN. [Presiding.] Thank you, very much, for your statement. It is a very important statement, and we are grateful to have it.

Let me now go to Ms. Debbie Sherrill who, as I said earlier, is a Claims Settlement Agent in the Atlanta, GA, office of the RTC.

She is going to go ahead and give her testimony at this time. Thank you.

TESTIMONY OF DEBBIE SHERRILL, RESOLUTION TRUST CORPORATION, CLAIMS SETTLEMENT AGENT, ATLANTA, GA

Ms. SHERRILL. Thank you, Chairman Riegle. I am Debbie Sherrill, and I am from the Atlanta office. I am currently employed with RTC. My contract will be up November 9.

Because, like several other people on this panel, I raised questions, they told me when my contract was up. They told me that they didn't have to give me a reason. So I really don't know why.

But I am here today basically as a concerned Taxpayer as well as an RTC employee to explain to this committee all the waste, and abuse, and the fraud, and mismanagement that I have seen and that I have personally experienced at RTC.

I have three areas of concern that I would like to discuss. My first one is unqualified personnel in key management positions. Second, contractor fraud and abuse. Third, waste and abuse due to mismanagement.

A prime example of unqualified managers is that we now have a director who, prior to working for RTC, held a position as a secretary-receptionist. We had another director, and his job prior to RTC was a butcher at a meat market.

Now there is nothing wrong with these positions. I am not saying that. But I am saying it does not lend the experience that is needed to be a manager in a corporation such as RTC.

So what you have is unqualified, incompetent managers just contributing to the chaos that already existed and losing more money because they don't have the background necessary to make a sound business decision. Because of these types of managers, I also found that employees would make suggestions for improvement and

would be reprimanded and ridiculed in front of their peers for doing so.

It was basically from the insecurity of these managers, who took that as criticism because they did not know enough about the position to know it was really a good suggestion and that it might work, that suggestions for improvement were discouraged.

So the result of having these types of managers is that you get a fearful and demotivated staff who are afraid to say anything when they find a problem.

They only promote the people who are more incompetent than they are, so they will look good. And then you drive away the more qualified, experienced people through intimidation, or discrimination, or harassment, you know, whatever they can get to work to make you leave.

The second point I wanted to talk about was contractor fraud and abuse.

One of the most common areas there is padding of bills. I have had bills submitted where I had one lady tell me that—well, when I questioned her bill—she did her work when she went back to the hotel. She had charged 6 or 7 hours overtime every night for 2 weeks. We were working at the bank until 7 or 8 o'clock that night. I am sure she was not staying up 6 or 7 hours more after she got in at night, and she never produced anything on paper to show me what she had done during that time, but she was studying, and she was formulating a memo.

I mean, you know, you do not sign off on those types of bills. You would have bills where a project should take 2 hours, and they would bill you for 6 hours. When you would raise questions like this with the managers that I am under, these bills are being paid anyway.

They will talk to the contractor. The contractor will produce a memo to justify why they have got that bill, even though you do not have the backup to prove that they really did that.

My result was that I would refuse to sign off on the bills, which caused me a lot of problems.

The next item of abuse would be underbidding of contracts. Once they have been awarded the contract, then they would increase the cost.

I had one bank where, just my department only, bid \$95,000 to do the contract. Well, 2 weeks into the job they came back and re-submitted and they said, well, Debs, it looks like it is going to take about \$270,000 to complete this project.

Well, that is not a whole lot of money, you know, considering everything, but when you let me get away with it once, then they get another bid and they do it again and again. It does not take long for it to all add up. The idea is that you have opened the door for abuse, and you have given them an avenue to use.

Another large waste we have is delaying review of contractor work and responsive action when a problem occurs.

A prime example of this is, we had a firm who contracted to do appraisals on a branch facility, and the furniture, fixtures, and equipment in those facilities.

The project should have taken 3 to 4 days to complete. This guy did it in one day. We could not figure out how he did it.

The people at the site, once they got the work product, were so upset because it was inaccurate and so inferior they did not want to pay the bill. They talked to the people in Atlanta.

The office in Atlanta decided to pay the gentleman, anyway. So now this is my bank, and it is time for me to find a purchaser for these branches and the assets.

When you look at the data that was on this appraisal, it was so inaccurate, furniture was listed that did not even exist. So I am sitting there trying to sell furniture that I do not have to people.

The RTC's response to this, when I questioned them about it, was to hire another contractor to do another appraisal. Then you will have a true picture of what you can sell.

Senator KERRY. Let me just ask you. You are saying that on this particular appraisal, items were appraised that you knew did not exist?

Ms. SHERRILL. Right. When we checked the inventory listing, then the people at the site said, well, this is an old listing. This furniture does not exist anymore. It was broken; it was thrown away; it is not here. I mean the items were not physically there.

Just the proximity of the branches of the facilities where this work had to be done, there is no way they could have gotten to all the branches in one day. I mean, you physically could not even travel to them, much less try to do an actual appraisal on them.

Senator KERRY. What did people say to you when you raised the question about the fraudulent appraisal?

Ms. SHERRILL. About doing another appraisal?

Senator KERRY. Well, did you say this appraisal was fraudulent and not valid?

Ms. SHERRILL. Yes, we did. They said, well, we have already paid them for it. We will just have to get a second appraisal. I mean, the appraisal is worthless if you cannot use it.

Senator KERRY. Was a person hired again to do appraisals?

Ms. SHERRILL. Yes, he was.

Senator KERRY. The same person was hired again to do appraisals, even though they appraised things that did not exist?

Ms. SHERRILL. Yes, sir. Another example of this is, we had a Big Six accounting firm that we should have canceled the contract on. The work they turned in was inaccurate. They did not meet deadlines. They were very poor presentations.

I refused to sign off on a lot of the bills because they could not justify the hours. I refused to sign off on a lot of the data they turned in because it was wrong. We would send it back, and it may or may not be right.

But I discussed this with our managers and I discussed it with the accounting firm's managers, too, telling them: You need to replace these people, or we need to cancel your contract. My management got very quiet and did not want to support that, even though I had documentation to prove the work was poor.

So the end result was that they got paid for the job; the contractor, just as well as the appraisal people, are still submitting bids on other jobs and they are being awarded those contracts which, as a Taxpayer, makes me really angry because we are seeing them do this.

This is a very fixable problem. That is why it upsets me so much, because we could put these people on a hold list very easily, pending an investigation to clear their name over any work that is not correct, and not allow them to submit a bid until they have done so. It is not a hard thing to do. It is just that there is no one in my management that is willing to take that responsibility and put their name on a piece of paper that says this is what we have got to do.

Instead, what they do is say, well, Deb should have handled that differently. She should have talked to them sooner, or she should have done something else, because that is a much easier thing to do than to take responsibility yourself. When you have incompetent managers, that is what happens.

Another area of concern I have is that they hire contractors to audit other contractors. In my department we use contractors, so I have to audit their work. Then there is the PCR Review Committee that comes in. It is an Internal Committee that audits my work. An IG comes in and audits the other work. Then GAO comes in and audits it again. Then we hire a contractor to audit it one more time just to make sure everybody is right.

You know, it is ludicrous. If there is a problem, you do not need five audits to determine there is a problem. You will know it way before then.

Much of the work conducted by the contractors could be done in-house. We already have the trained staff to do it. Many times we find, just like in this case we were discussing with the appraisers and the example of the contractor, you are paying these people \$100 to \$125 an hour. They are untrained and inexperienced in the field. It is much cheaper for us to go out there and do it ourselves because we have to go out there and train them anyway.

Personally, I have a real problem sitting there training a gentleman who is getting paid \$125 an hour for something I can do. He should be teaching me something. I do not need to be spoon-feeding him.

When I have talked to the managers about this type of thing, their reaction is: Don't worry about it. Congress wants us to hire more contractors. Well, that is good. In some cases we need more contractors, but not this type of attitude. The attitude is: If you have a task that you do not want to do, you hire a contractor to do it. You do not worry about the money.

The joke around the office is that you call Congress and tell them to go to the basement and print more money.

Now to me as a Taxpayer, I did not think that was funny. It really ticked me off, because I see the money going out the window.

If you do not conduct a timely oversight of the contractors, you might as well not do the audit at all, because it is just like in these cases where we have given them new jobs.

If you refuse to pay a bill and they sue you and you do not audit them until a year later, even if you can prove they are wrong, if you hired them for three more jobs it does not matter. The point is, then, what is the difference? It could not have been too bad; you hired them again. We shoot ourselves in the foot everywhere we go.

My last topic is waste and abuse due to mismanagement. I will make this brief. I know we could have stories all day long.

I had one assignment where I was to wait for them to bring a permanent person into the field. So we set up deadlines and key meetings with purchasing banks to do the transition.

The gentleman never showed up. So we finally got concerned about it. I called the offices in Atlanta, and they said, well, come on by.

After I got back to Atlanta, the banks called and said, well, we found the gentleman that we were looking for. He had a drinking problem and he had passed out, and the local police had taken him back to the hotel.

He still did not show up for key meetings where he was needed. He was abusive to the staff verbally. They were afraid of him.

I wrote a memo to the director. The president of the acquiring bank called our director. Nothing was done about it. It finally got to the point where the president of the acquiring bank got so angry he decided the best thing to do was call CNN, and he put it on the news. He thought if he put it on the news, it would get him out of town.

So when the managers realized that they really were going to do something drastic, they pulled the gentleman back in and replaced him with someone else. A few months down the road, the gentleman gets a promotion. In the private sector he would have been fired that day. There were no reprimands.

The last point I would like to make on the mismanagement is that I have heard so many times, between the directors and the department heads and the supervisors at all levels, they sit down and they will tell all of us, that RTC is a special entity that is not held accountable under the regular rules and regulations of other Government agencies. Well, if we are not held accountable under those rules and regulations, where are we held accountable? Most of the time, we are not.

The policies and procedures are written. The manuals are sitting around, but no one is enforcing them because it goes back to the incompetent managers. Again, everyone is afraid to make a statement and take responsibility for anything.

Senator KERRY. Let me just ask across the board here. Is there anybody who disagrees with that in this entire group?

PANEL MEMBERS. [Simultaneously.] Not at all.

Senator KERRY. Not one person disagrees. This is uniform. Nobody is enforcing any of the regs? Is that correct?

PANEL MEMBERS. [Simultaneously.] Right.

Senator KERRY. And you are saying that this fellow who was an alcoholic, who repeatedly had problems, who did not show up for work for weeks at a time, was promoted?

Ms. SHERRILL. Yes, sir. He was brought back into the office. Then, later when it was time for his evaluations, he got a promotion.

Senator KERRY. Notwithstanding that the police had held him at one point when he did not show up, and that there were repeated occurrences?

Ms. SHERRILL. What can I say? It was not my decision.

Senator KERRY. Thank you.

Ms. SHERRILL. But your bottom-line result from this is that when you have managers doing this type of management style to your

employees, your only retaliation is to abuse sick time. They abuse overtime. And then the employers, the managers' retaliation is through intimidation, harassment, and discrimination. So in one way or another, they will get you to leave if you raise questions.

In conclusion, I guess what I really wanted to get across to this committee before I left, to me RTC is operating strictly on a crisis management basis. I wanted to motivate this committee to realize how serious it is and to try to get it to take some measures to correct the problem.

Thank you.

The CHAIRMAN. [Presiding.] Thank you very much, and thank you for coming forward and giving us that testimony today.

Mr. Henderson, you are an FDIC employee. You are on assignment to the RTC and you handle documentation on legal contracting for the Atlanta, GA, office of the RTC. May I ask, sir, how long have you been in Government? How long has your career spanned?

TESTIMONY OF WILLIAM A. HENDERSON, RESOLUTION TRUST CORPORATION, LEGAL INFORMATION TECHNICIAN, ATLANTA, GA

Mr. HENDERSON. Since 1981.

The CHAIRMAN. So you are finishing 12 years or so of Government service?

Mr. HENDERSON. Correct.

The CHAIRMAN. You have that span of history yourself over which to make the observations you are about to make?

Mr. HENDERSON. Correct.

The CHAIRMAN. Very good. We are pleased to have you, and we would like to hear your statement now.

Mr. HENDERSON. Thank you. My name is William A. Henderson. I reside in Atlanta. I am presently working with the RTC office in the Legal Division of Atlanta as a Legal Information Technician. My responsibilities are to input and monitor financial data of fees and expenses from outside counsel involving cases that arise out of failed S&L's.

With all good intentions of FIRREA, which is better known in our office as diarrhea, because it wipes us out. It is cleaning us out financially, since its inception, the RLIS unit for which I work has been plagued by mismanagement.

Attorneys representing outside law firms with overdue RTC bills have been allowed to enter the RLIS unit, oftentimes unescorted. This is a breach of security and also a violation of delegated authority to approve payment of bills. Only attorneys are supposed to initiate authorization for payment of bills. Support staff has been seen authorizing fraudulently, payment of bills.

Due to management's negligence, I have seen duplicate, even triplicate payments dispensed to law firms for a single invoice for legal services. Such blatant negligence and unethical practices directly violates the RTC's mission to maximize return and minimize the losses of managed and resolved savings and loans.

Senator KERRY. Were these duplicate and triplicate payments ever recouped?

Mr. HENDERSON. No.

Senator KERRY. Ever recouped?

Mr. HENDERSON. Never.

Senator KERRY. Were they brought to management's attention?

Mr. HENDERSON. They were brought to management's attention, and a memo was E-Mailed and sent from Washington to encourage everybody to try and recoup payments that had been processed. Many times the firms had gone out of business anyway. It was really a scam.

The CHAIRMAN. What size checks would these have been?

Mr. HENDERSON. Anywhere from \$5,000 to \$50,000.

The CHAIRMAN. So these were big checks? These are not small checks?

Mr. HENDERSON. Whoppers. Yes.

The RTC was inundated with many moves of personnel, and this boils down to a physical waste as well as a financial waste. Several sections in the Division of the RTC were required to move three or more times in a year from one floor to another. Professional movers were hired. Boxes were loaded on trucks and moved from one building to another, from one floor to the next floor. Generally the moves lasted approximately 8 hours per trip.

The professionals moved, the contractor billed, and the RTC paid. The employees of the moved section or division were unable to perform their designated tasks for the entire work day. Therefore, the entire section or division was incapacitated for an entire work day. There is a total disregard for Federal rules and regulations.

The flagrant disregard for rules and regulations is pervasive throughout the RTC. Managers often chide: "We are RTC, not FDIC." Or, this does not apply to the RTC. Therefore implying that RTC does not have to abide by the same rules and regulations as the FDIC.

Management's perception that RTC is a quasi-organization has bred an atmosphere of arrogance. Since they believe they are not a full-fledged Governmental agency, they have a mandate to pick and choose which Federal regulations and rules they want to follow, and those they wish to disregard. This has led to numerous EEO complaints and to Office of Personnel violations.

In regard to EEO and some of the oversight agencies, the RTC has reduced the EEO to a puppet operation. EEO's autonomy to resolve complaints without management interference is nonexistent.

Currently the RTC's EEO office is clogged with complaints that are still in the informal, preliminary stage of the complaint process and have been stalled in that stage for more than a year.

As an EEO representative, I have represented at least five complainants in the past year and a half. During that time, I have witnessed management's refusal to cooperate with EEO officials. This refusal to cooperate includes failure to provide investigators with requests for documents and oral testimony.

As a result, investigators have difficulty following the EEO timetable which governs every step of the complaint process. Therefore, employees have no viable means of resolving discrimination complaints against RTC.

Even in its investigatory stage, each complaint costs \$70,000. With these five complaints alone, the investigation is costing \$350,000, which they had no business incurring at all. With the

proper management and the proper counseling, these complaints could have been resolved at the drop of a hat.

In conclusion, reprisals and nonrenewable contracts, harassment and intimidation are the risks many will bear here today. The RTC's discriminatory practices and unethical behavior have bred an atmosphere of distrust and paranoia within the organization.

Management's disregard for regulation and business ethics is a direct result and an insult to legislative authority and sets a dangerous precedent which undermines the authority of elected officials.

The RTC was created to rid the banking establishment of sick S&L's. Instead, it created a sick agency. Taxpayers are hemorrhaging financially externally, and now they are hemorrhaging internally.

It is my hope that my testimony today illustrates the need to provide meaningful solutions to the problems which ail the RTC. In my opinion, there may be a need for an appointment of a Special Prosecutor.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Henderson.

I have some thoughts about what you have said here, and some ideas. Senator Metzenbaum and I are both discussing how best to follow up on the various things that are being set out here.

I think I will hold that until just a little bit later.

Senator METZENBAUM. If I could, Mr. Chairman, could I take just a moment to congratulate you and your staff and these people? Each of them deserve a chapter in that famous book of John F. Kennedy's *Profiles in Courage*. It takes guts to come before a Senate Committee and talk about your present employer, or your former employer.

You people are absolutely wonderful. You give me some reassurance that there is some hope in our Government. But some of the things that you are telling us cause us to just want to sit here and cry because, while we fight so hard around here to find some money for some needed program—whether it is education, or feeding, or health, or whatever the case may be—this is an agency that has been wasting, wasting, wasting money.

No matter who is at the head of it, we could not get any action. We have just blown not "millions" but "billions" of dollars on lawyers and accountants who have been working with them and who have ripped off the system. The people working the system have ripped it off, and you people are absolute giants.

Mr. Chairman, I want to tell you that you and your committee staff deserve a lot of credit. I am sure it was not easy to find somebody in one city, and somebody some place else, but you have done a magnificent job. It is a privilege for me to have an opportunity to sit here and work with you.

The CHAIRMAN. Thank you very much.

I think it should be noted, too, that everybody who has testified is testifying under oath. People do not do that lightly. I take what is being said to be the truth, even without the oath, but I think the fact that people have come in here and understand that they are testifying on that basis adds great weight to the credibility of what they are saying.

I think, too, as we listen to these individual stories from different areas, we see this pattern. You see a clearer pattern emerging here where the same difficulties are infecting the RTC all over the place. That is why I think it is so important. We will hold until later our thoughts as to what we will do next.

Let me now turn to Ms. Deanna Smith. We are pleased to have you. Pull that mike right up close. We would like to have you go ahead and make your statement.

TESTIMONY OF DEANNA SMITH, RESOLUTION TRUST CORPORATION, LEGAL DIVISION, ADMINISTRATIVE ASSISTANT [FORMER EMPLOYEE, CURRENTLY WITH FDIC], ATLANTA, GA

Ms. SMITH. My name is Deanna Smith. I am pleased to appear before the committee today in response to your request concerning my experience at the RTC.

I am today employed by the FDIC in the Atlanta Regional Office as Administrative Assistant with responsibility for payroll and travel vouchers.

I had one particular experience at the RTC which I believe represents a clear case of waste, fraud, and abuse. I held a similar position at the RTC to the one I have now at the FDIC.

I was originally hired by the FDIC Legal Division in the Atlanta Regional Office. FDIC trained me in the handling of vouchers and receipts by employees when they claim reimbursement for business-related expenses.

Obviously one of the main things you are looking for when you handle such vouchers is to protect the FDIC insurance funds by making sure that people are not getting paid by the Government for personal business. I was trained by the FDIC to look out for such practices. Our office was converted from the Atlanta Regional Office of the FDIC to the Eastern Regional Office of the RTC, which is Taxpayer funded.

After management was changed from FDIC to RTC in 1991, I found an apparent problem on a travel voucher submitted by the new Deputy Regional Counsel. The nature of the problem was charging a rental car for personal use and billing the RTC.

I was asked to review the manager's travel voucher prior to its formal submission, and I did so. When I did, I confronted him about the rental car charge. He acknowledged that he had used the car for personal business. I told him he was not authorized to charge personal expenses on the Government's Diner's Club charge card, and I wanted to give him an opportunity to correct the voucher before he submitted it for reimbursement and auditing.

He screamed at me and he told me that I didn't know my job. I told him that it was very hard for me to confront someone in his position with this, and hoped it would not be held against me. I told him that I would call Washington about this. He told me that he would call Washington, as well. I called Washington and spoke with the person in the Travel Unit. I asked if the charge was appropriate, and whether I was correct.

They told me I was. I told them they might want to start pulling his vouchers to check them. They told me to tell him the charge was wrong and that he should not do it again. I relayed the mes-

sage to him and it made him even madder. Nothing was ever done to discipline him that I know of. I do not recall seeing the voucher again. I have no way of knowing whether he corrected the voucher. If he did not correct the voucher, I do not know whether he ever paid the charge back.

I later heard from employees in other offices that he had a problem with travel vouchers. As of today, this manager is still at the RTC.

Needless to say, I believe I experienced retaliation as a result of having insisted on following the rules and reporting the travel voucher problem. Several times it had been suggested to me by the head of the office that I would be selected for an administrative assistant training position which had promotion potential. I was not selected.

RTC later sought to relocate me to the Philadelphia RTC office, which I fought. About 18 months after the incident, I was fortunate to be returned to the FDIC. This experience was very chilling to me. It makes me hesitant to pick up the phone to report waste, fraud, or abuse to the Inspector General Hot Line because, if I do, someone may find out and I may be punished.

As a Taxpayer, I was also very angry because it was a case of the Government being ripped off.

I would like to thank the committee for the opportunity to testify today.

The CHAIRMAN. Thank you very much.

I want to thank you, as well as I have said to the others, for coming forward today.

Let me now go to you, Ms. LePique. Annette LePique is the Section Chief of the Affordable Housing Unit in the Newport Beach, CA, office of the RTC. We welcome you, and we want you to give us your statement now.

TESTIMONY OF ANNETTE LePIQUE, RESOLUTION TRUST CORPORATION, SECTION CHIEF, AFFORDABLE HOUSING UNIT, NEWPORT BEACH, CA

Ms. LEPIQUE. Thank you, Chairman Riegle, and thank you to all the Members of the committee for inviting me to appear here today.

I am here to speak about my personal experiences at the RTC regarding waste and mismanagement specifically as it relates to the handling of claims of discrimination and sexual harassment at the California office.

I was promoted in July 1990, to the California office in the position of an affordable housing specialist. I have a Masters Degree in Administration. I have 15 years experience in affordable housing. I considered this a tremendous career opportunity.

RTC's Affordable Housing Program was created by FIRREA in 1989. I was proud to be a part of it then, and I am proud to be a part of it now. We have developed housing opportunities for thousands of low- and moderate-income Americans and Taxpayers, as well. It has been considered a silver lining to the cloud of the savings and loan crisis.

But there is one storm cloud that has hovered, and I believe it is the result of the California office's total lack of any affirmative

action hiring, which has led to gender-based discrimination and sexual harassment at that office.

For 2½ years I was subjected to sexist remarks, suggestions, and actions, creating a hostile work environment at the most senior level. A previous complaint against one particular individual resulted in absolutely no action, and he was promptly promoted. His actions always involved subordinate women. But then women are virtually nonexistent in senior management at the RTC.

As a witness in a previous EEOC complaint in 1991, I was a prime target for retaliation. My harasser wheeled tremendous power in the California office, especially with the arrival of Mr. A. J. Felton from the Atlanta office, a close personal friend of Stanley Tate's and Phillip V. Jones, Jr.

Friends were promoted, and others were not. Among those "others" could always be counted females and minorities. Even though I was recommended for promotion by my current supervisor, it was denied by Mr. Phillip Jones.

In filing my EEO complaint in November 1992, I found that the California office had never even bothered to appoint EEO counselors. So my complaint was handled by an investigator in the Kansas City office. The investigation was thorough. It was well documented, and it was completed in 30 days. It affirmed my complaint and the results were given to senior managers over the phone the same day it was completed.

Filing an EEO complaint is sometimes referred to as "protected activity," but I had to ask: Protected activity for whom? The same day I filed my complaint I received my first ever adverse personnel action from Mr. Jones, within 7 hours of the filing. He is not even my supervisor. I dared to take a swing at the good old boy system, and my punishment was about to begin.

During the EEO investigation, senior managers began investigations of their own of me personally and my department. When this produced nothing they could use against me, I was made—forced to attend a meeting and given four back-dated annual performance reviews, all showing progressively deteriorating performance on my part. Two of these were for a period I had already been reviewed, and although my attorney attempted to attend the meeting—because by that time I was forced to retain counsel—he was thrown out by senior managers of the office.

At the very same time, during this very same period, nothing was being done to the harasser other than a transfer to another executive level position.

In a letter to my attorney, Mr. Felton, the Vice President of the California office, denied the existence of an original annual performance review, even though it was submitted as an attachment to my EEO complaint.

In terms of waste and mismanagement relative to this complaint, a total of four EEO investigations were done and were filed by Ms. Sandra Crisman, who will speak next. These alone have cost the Taxpayers tens of thousands of dollars.

In addition, management ordered four additional reviews intended to discredit us, rather than getting to the truth. They already knew the truth. These additional needless reviews involved

over 100 employees of the RTC's California and DC offices, took months to complete, and cost hundreds of thousands of dollars.

Each additional review only confirmed what the EEO office had established. Both female department heads had more than acceptable work records to be promoted. Sexual harassment and discrimination and retaliation had occurred. And Ms. Crisman and I were the victims, not senior management, and it emanated from the very top.

The last report that was done actually found several more victims of sexual harassment who had never reported that. Reactions by the senior management of California was swift. My harasser was put on special assignment to Home Fed Bank in San Diego for a period of 5 months, which translated to a 5-month vacation because he did not go to work during that period.

All expenses were paid. That was at an approximate cost of \$2,700 a week to the Taxpayer. These were two more months of administrative paid leave until he was finally terminated by the Washington, DC, office as California senior managers remained silent on the issue.

In conclusion, I want to say that the senior managers most responsible for the situation in California have received no sanctions at all.

My personnel file, on the other hand, is full of adverse actions since November 1992. In fact, one of the people found to have discriminated, Mr. Phillip Jones, was recently promoted to our DC office.

Victims in California remain uncompensated, although settlement discussions with myself and Sandra Crisman have commenced.

I would like to commend our EEO office in DC for their handling of this, but they cannot unring the bell. Many people have lost. Valuable employees have left, totally frustrated by the system. One woman left shortly after her filing because she could not get a promotion or a significant job assignment.

A female attorney was fired for asking that women be promoted. Another female manager was demoted after filing her complaint and resigned and moved—Kozak style like the Soviet Union, perhaps in search of more freedom than the RTC offers.

Most just suffer in silence, afraid of termination or other types of retaliation. I have suffered. At the RTC, boys will be boys, and when they get in trouble they all take care of each other, and we all have to pay for it.

Please, even as the RTC prepares to sunset, for those of us who have never been members of the boys club and never will be, help RTC management at the highest level recognize the value in a diverse workplace, one that reflects the face of America.

Thank you, very much.

The CHAIRMAN. Thank you for coming forward. It is the intention of this committee on all the items that are being presented today, personal and more broadly generic items, to initiate actions to follow up on each of them.

I do not want this stuff buried under either a wall of silence or anything else. So your coming and talking is not the end of this process. We will take these things forward. I want you to under-

stand that we hear what you are saying. I am very upset about what you have said.

So let me now proceed——

Senator METZENBAUM. Mr. Chairman.

The CHAIRMAN. Senator Metzenbaum.

Senator METZENBAUM. Ms. LePique, in your statement you refer to the fact that Mr. Felton was a personal friend of Mr. Stanley Tate.

Ms. LEPIQUE. That is correct.

Senator METZENBAUM. Mr. Tate at that time was on the Board of Overseers of the RTC?

Ms. LEPIQUE. That is correct.

Senator METZENBAUM. Do you read anything more into that, other than your statement? You know he is up for confirmation to be Chairman of the RTC?

Ms. LEPIQUE. Absolutely.

Senator METZENBAUM. Being a personal friend in and of itself is not necessarily a negative fact, unless there was some way he was involved, or he should have shared some responsibility in this situation.

Ms. LEPIQUE. That Mr. Felton should have shared some responsibility?

Senator METZENBAUM. Mr. Tate.

Ms. LEPIQUE. No.

I am just saying that Mr. Felton has been protected, I believe, because of his association with him, as has Mr. Jones, as have most of the people involved. As I said, they stick together. They are all culpable in my evaluation. That is what I have read into the EEO investigation that was done by the RTC.

Their own internal EEO Department did an investigation using an outside contractor, and that is what the contractor found.

Senator METZENBAUM. Thank you, very much.

The CHAIRMAN. Thank you very much, Senator Metzenbaum.

Ms. Crisman, we would like to hear from you, now. Thank you for coming.

Just pull that mike around. When you are ready, we would like your statement.

TESTIMONY OF SANDRA CRISMAN, RESOLUTION TRUST CORPORATION, DEPARTMENT HEAD, CONTRACTS DEPARTMENT, NEWPORT BEACH, CA

Ms. CRISMAN. Good afternoon. My name is Sandra Crisman. I am a Manager in the Contracts Department of the RTC's Newport Beach, CA, office.

I would like to begin by thanking the Chairman of the committee for the invitation to appear today. I am here to describe my personal experience with gender-based discrimination at the RTC.

I believe my experiences can be summarized in five statements. First, I was denied a promotion that I had earned. Second, management's attempts to justify the denial were false and inappropriate. Third, management's stated standards of performance were not applied consistently between male and female department heads. Fourth, following the filing of my EEO complaint, management engaged in acts of reprisal against me. And fifth, despite the

RTC's confirmation of discrimination and reprisal in my case, the RTC's executive management here in Washington promoted the individual who discriminated against me.

My professional career spans both the public and the private sectors. Prior to joining the RTC, I had 5 years' experience with the Internal Revenue Service in human resources management, and 3 years' experience in aerospace contracting with a private contractor. I possess a Bachelor's Degree in Management, and a Master's Degree in Finance.

My employment with the RTC began in July 1990, when I was hired by the California office as a contract specialist. In July 1991, I was promoted to Department Head and told by my supervisor that if my performance was satisfactory, I would be promoted to the full working level of the position in 1 year.

During that year, I received a "Superior" performance award, and at the end of the year I received an "Excellent" performance review from my supervisor, with laudatory comments from her supervisor.

My promotion was recommended by two levels of management above me. However, when it reached the desk of Mr. Phillip Jones, Assistant Vice President, it was denied. I was told that Mr. Jones wanted to wait and see if the California office had met its sales goals. However, I had never been told my performance would be tied to the sales of the office. This requirement was not in my position description, nor was it a factor on my performance evaluation.

I was aware that a promotion in the Contracts Department had just been approved for a male contract specialist. I was also aware that male department heads in the California office were routinely promoted.

Therefore, in August 1992, I filed an EEO complaint. During the EEO investigation, management changed its reasons for denying the promotion. Mr. Jones stated that a poor program compliance review and findings in the Inspector General's report were the reasons for the denial, but the facts do not support this.

The program compliance review was fully acceptable as confirmed by the lead reviewer in the EEO investigation. The Inspector General's office has confirmed that there was no derogatory information about me or anyone who worked for me in the report referenced by Mr. Jones.

In a further attempt to justify their actions, senior management stated that they do not promote supervisors whose program compliance reviews showed deficiencies until those deficiencies are corrected.

If this is management's policy, then it must be consistently applied to males and females. This is not happening in the California office. The EEO investigation confirmed that male managers whose departments had significant deficiencies noted in their formal reviews did not have their promotions withheld pending resolution of the deficiencies. Instead, they were promptly promoted.

After filing my complaint, management took actions which constituted reprisal. Senior management immediately ordered a review of the contracts department by a local team. Although the outcome was favorable, they ordered yet another review, this time

from the Washington office and at least ten individuals came for one full week. The final report rated the department as excellent.

Needless to say, these reviews consumed countless hours for both the auditors and the 35 members of the contract department staff. No other department, with the exception of affordable housing which is also headed by a female, Annette LePique, has been subjected to multiple reviews such as this.

The EEO investigation has now concluded and confirmed discrimination in my case. A resolution is pending.

I would like to comment that the RTC's Washington office of Equal Employment Opportunity has been very responsive since January 1993. They have made efforts to educate all managers within the organization about sexual harassment and discrimination.

Until recently, I believed that management throughout the organization was making a good-faith effort to eradicate the discrimination. However, I am here today because this is not the case. The individual who denied my promotion, Mr. Phillip Jones, has been recently promoted to the Washington, DC, office.

I am personally outraged by the Corporation's decision to promote this individual. He not only discriminated against me, but he was found to have discriminated against Annette LePique, who just spoke. By its actions, the RTC is clearly saying that its managers are not held accountable for their discriminatory actions. I find this situation untenable.

I believe that RTC supports the good old boy network, at the most senior ranks of management, which is why Mr. Jones was promoted in spite of his discriminatory activity. Clearly management at RTC has abdicated responsibility for correcting discrimination and reprisal within the organization.

I am thankful to the Members of the committee for their concern and exhort you to put an end to this heinous conduct.

Senator KERRY. [Presiding.] Thank you very much, Ms. Crisman. I appreciate that.

Let me just say, as a Senator I am outraged enough—I think if I were a woman, I would be feeling very powerless and very frustrated and super angry at this notion——

Ms. CRISMAN. Yes.

Senator KERRY. —that there seems to be a reward, not withstanding findings, and it is certainly something that the committee will inquire about.

Ms. CRISMAN. Thank you.

Senator KERRY. Mr. Hans Mangelsdorf is the Senior Property Manager in the Newport Beach, CA, RTC.

Mr. Mangelsdorf.

TESTIMONY OF HANS MANGELSDORF, PESOLUTION TRUST CORPORATION, ASSET SPECIALIST, NEWPORT BEACH, CA

Mr. MANGELSDORF. I would like to first express my appreciation——

Senator KERRY. If I could ask each of you, I know we are almost toward the end of the line, but if you could keep it tight, as most of you have, and it has been very helpful.

Thank you.

Mr. MANGELSDORF. Thank you for allowing me the opportunity to speak here today. My comments are based on my tenure at the RTC and 17 years experience in California real estate and the savings and loan industry—

Senator KERRY. Pull that mike a little closer and speak up a little bit.

Mr. MANGELSDORF. The stated philosophy of RTC's management is that nothing will stand in the way of the RTC. Nothing. Not the rules, not the regulations—

Senator KERRY. How long did you work there?

Mr. MANGELSDORF. At the RTC?

Senator KERRY. Yes.

Mr. MANGELSDORF. I am still an employee at the RTC. I started in June 1990.

Senator KERRY. 1990?

Mr. MANGELSDORF. That is correct.

Senator KERRY. Your job is what?

Mr. MANGELSDORF. I am an Asset Specialist and Institutional Oversight Manager.

Senator KERRY. Your background?

Mr. MANGELSDORF. Asset management in the savings and loan and real estate industries.

Senator KERRY. How long have you been involved in that?

Mr. MANGELSDORF. Seventeen years.

Senator KERRY. What is your educational background?

Mr. MANGELSDORF. I have 106 college units including the University of Southern California.

Senator KERRY. You say you have worked in this area for 17 years?

Mr. MANGELSDORF. Yes sir, I have.

Senator KERRY. Ever in the public sector, previously?

Mr. MANGELSDORF. No sir, I have not.

Senator KERRY. In the course of your 17 year experience in the private sector, did you work for any corporate entities?

Mr. MANGELSDORF. Yes, I did. Wells Fargo Bank and American Savings & Loan.

Senator KERRY. Have you ever run into any similar management practices in the course of those 17 years?

Mr. MANGELSDORF. Absolutely not.

Senator KERRY. Now why don't you describe what you ran into.

Mr. MANGELSDORF. OK. As I started to say, the stated philosophy of the RTC's management is that nothing will stand in the way of the RTC. Not the rules. Not the regulations. And certainly not RTC's employees. Consequences can be seen in the EEO arena, in RTC's operations and in the local economy.

I have served with the RTC since 1990. I have worked at Columbia Savings, Pacific Savings, Santa Barbara Savings, and Great American Savings, some of the largest savings and loans to come across our office.

During this period, a pattern of covert activity, mismanagement, and misconduct has developed in the California office. I have observed illegal acts, and I have reported them to the Inspector General's office. I have been asked to do things that I simply just wouldn't do.

Charges of harassment and reprisal are pervasive. The place is really out of control. It is abusive, and it is completely demoralizing for an employee.

RTC's own independent investigations have confirmed these allegations. However, RTC has limited its corrective action.

As an example, I have supported Annette in the EEO process through testimony to the Inspector General's office, GAO, the EEOC, and numerous in-house investigations. Since then, I have received reprimands, written warnings, my first-ever poor employee evaluation, and continual denial of promised promotion. I have always been a top producer at the office.

While independent EEO investigations have validated my allegations—

Senator KERRY. Let me just ask you. Did your negative appraisals only begin after you became a thorn in the side, so to speak?

Mr. MANGELSDORF. Absolutely.

While the independent EEO investigations have validated my allegation and recommended settlement, no corrective action has been taken. It is the RTC's price for telling the truth.

Voicing my opinion is part of my job description. It seems that every time I do, I suffer. My supervisors are hostile and they openly call me a "native," meaning—

Senator KERRY. Call you a what?

Mr. MANGELSDORF. A "native"—meaning that constructive criticism has no place at the RTC.

RTC is dumping assets as rapidly as possible through auctions. Structured sales transactions have endangered the local economies. Unfortunately, not only have the past real estate auctions disposed of property using steep discounts, but high operating costs have substantially reduced return to the Taxpayers.

Property slated for auction is taken off the market for months at a time, regardless of market interest. In other words, we could have an offer pending, and they would send it off to an auction, like Mr. O'Bryon was saying earlier, to create a pretty auction for the public.

A typical minimum bid for property at the RTC is 30 percent less than the appraised value. Auction selling costs are reportedly 22 percent, and sometimes even more, of the selling price compared to an industry auction at 17 percent. Using a local real estate broker costs about 6 percent. That is a big difference.

In effect, the RTC and the American Taxpayer pay a high cost of sale to achieve a discounted sales price. The difference means millions.

A little earlier we talked about a \$500 million difference. I would concur with that figure for the present. I think if the RTC continues, that will easily be \$1 billion, or maybe even more. I think that is a lot of money.

Senator KERRY. Is that the necessary price of disposing of this property? Or could something else be done?

Mr. MANGELSDORF. Oh, absolutely there are alternative measures available to the RTC.

Senator KERRY. Such as what?

Mr. MANGELSDORF. Well, direct sales for one thing.

The public comes to the RTC and the demand is high. I receive 20, 30, sometimes 50 and 100 calls every day. I talk to at least 20 and 30 Taxpayers every day. I could readily sell the property. I have the wherewithal to do it. Instead, I have to send them through a complex and convoluted system, which is frustrating for the Taxpayer and frustrating for the employees of the RTC.

Senator KERRY. To what degree does that system protect against a kind of—an alternative kind of fraud or favoritism that might enter the system of people just cutting their own deals without a systemic approach? I mean, could you have accountability?

Mr. MANGELSDORF. I worked at American Savings just prior to coming to the RTC. I was their corporate broker in handling the disposition of their real estate assets.

I was accountable to the Taxpayers. I was also accountable to the shareholders of the Association. My work was an open book, as it is at the RTC. There really is no difference except that in the private sector there is one guy I look to, myself. In Government, there are dozens. The ability to find out who might be culpable in any action is difficult.

Senator KERRY. But what you are saying is that there could have been an alternative structure of sale that would have been equally as accountable, but far more profitable? Is that correct?

Mr. MANGELSDORF. Absolutely.

Senator KERRY. Do you concur with that, Mr. O'Bryon?

Mr. O'BRYON. Absolutely.

Senator KERRY. I do not mean to interrupt his testimony.

Mr. O'BRYON. The RTC has so many different levels of delegated authority, and so many of the people who are involved within that level of delegated authority in making a decision about something as simple as selling a \$50,000 condo, as an example, you may have to go through 7 or 8 different steps and layers.

You might have to go in front of a committee who absolutely has no experience and knowledge of what is happening in the marketplace, no experience or knowledge of what is happening to real estate of that particular type, making a decision and asking you, the asset specialist, to justify your accepting an offer.

Now when I was working there, I remember one time I had a full-price offer on a condo. I sent it up to my boss. He sent it back saying you need to write a case study, and if you have got a full-price offer then something is wrong. We cannot accept the first offer.

I never got the property sold, quite honestly. The levels and the layers are archaic and ridiculous.

Senator KERRY. Let me come back, if I can, to Mr. Mangelsdorf.

I understand there were occasions where fraudulent information was passed on to the U.S. Congress in its efforts to try to evaluate this process. Is that accurate?

Mr. MANGELSDORF. I recall a time that I was asked to produce sales documentation where we were reporting to the Congress of the United States, however, it was taking too long for us to manufacture the numbers. Management asked us to stop where we were, double it, and add 10. Those were the numbers that were presented to you.

Senator KERRY. So it was just a total ballpark figure?

Mr. MANGELSDORF. An unqualified guess.

Senator KERRY. An unqualified guess?

Mr. MANGELSDORF. Absolutely.

Senator KERRY. And that guess was as to what? The amount of sales value? What was it pertaining to?

Mr. MANGELSDORF. Amount of the sales value, yes.

Senator KERRY. The amount of sales value——

Mr. MANGELSDORF. Yes.

Senator KERRY. —that had been produced? Or was to be produced?

Mr. MANGELSDORF. Sales production that had been produced.

Senator KERRY. That had been produced?

Mr. MANGELSDORF. Yes.

Senator KERRY. So in effect, you were providing us with figures alleging production that had not in fact taken place?

Mr. MANGELSDORF. Production was overstated.

The CHAIRMAN. More than “overstated.” You say that it was doubled, and then they said to add 10. So it was misstated by——

Mr. MANGELSDORF. A bunch.

The CHAIRMAN. Yes.

[Laughter.]

Mr. MANGELSDORF. Another avenue involves structured sales transactions where the RTC evaluates property based on its income.

Senator KERRY. How many times did that happen, to your personal knowledge?

Mr. MANGELSDORF. Overstating the production?

Senator KERRY. Yes.

Mr. MANGELSDORF. Personally, once. I imagine several times in the early days. We just didn't have the ability to produce the type of information you all were looking for.

Senator KERRY. Is that ability there now?

Mr. MANGELSDORF. Yes.

Senator KERRY. It is there now?

Mr. MANGELSDORF. Yes.

Senator KERRY. Do you think this has been corrected at this point?

Mr. MANGELSDORF. Yes. I'll add that it's at a substantial cost.

The CHAIRMAN. What do you mean by that? Is there something we should know about the cost to get it fixed?

Mr. MANGELSDORF. I think the amount of money that we spent on the computer system, not being a computer expert, of course, is a great deal of money more than we probably had to spend.

The CHAIRMAN. You know, that issue has come up, if I may, several times today. Do you have the impression that there were contracting relationships here where friends, pals, or whatever tended to get these contracts, or was it just that there was such a gross level of incompetence that people were coming in and ripping off the agency and charging them, whether it was for legal work, computer work, or what have you, just a lot more than they should have been charging in terms of what they were delivering?

Mr. MANGELSDORF. I think my colleague from the Atlanta office hit the nail on top of the head. I think the quality of the management level of the RTC has got a lot to be desired. I feel that many

managers are promoted not for their wherewithal but with the likelihood that they will be sympathetic to existing management.

The CHAIRMAN. But I am interested in the question of whether or not this waste is just sheer incompetence or whether this kind of pattern of waste has to do with funneling money, in effect through inflated contracts, to favored people? And if any of you can cite examples of that, I want to hear that.

In other words, there's different ways to waste money. It's one thing to waste it just because it is sort of a Keystone Cops operation at the management level, which is what you're describing. But I am also concerned that for the amounts of money that we're floating around here, if money was being passed out like that, that there may well be other patterns of where the money went, who got it, who didn't get it, that kind of thing. And I am concerned about the degree to which that may be part of this story. And, to the extent it is, that we get it identified and documented.

Mr. MANGELSDORF. OK.

Mr. HENDERSON. I think it's a combination of both.

Mr. MANGELSDORF. I would agree with that.

Mr. HENDERSON. From the legal aspect, there have been numerous cases where large cases were funneled to a particular law firm that the head of the legal division had an interest in.

The CHAIRMAN. You mean actually had an interest in that law firm?

Mr. HENDERSON. He had a personal relationship with that law firm.

The CHAIRMAN. How do you mean?

Mr. HENDERSON. To put it bluntly, the person that she was funneling the cases to was a familiar acquaintance of hers.

The CHAIRMAN. So there was a personal relationship?

Mr. HENDERSON. Correct. And it's a combination. It's more like the Keystone Cops than anything else. It's a combination of things that go into this pot. Having worked for FDIC prior to going over to RTC, I can make the comparison and it's like night and day.

We had one particular case where there was a young lady, it was a paralegal, that caught an error in a \$45,000 appropriation to a law firm. It turned up on the system as \$450,000. The firm had already been paid \$60,000 over the \$45,000. Her hell began when she found the error.

The CHAIRMAN. In other words, instead of giving her a pat on the back and maybe a promotion, she got hassled because she found the mistake.

Mr. HENDERSON. Correct.

The CHAIRMAN. Was that money ever reeled back in?

Mr. HENDERSON. No.

The CHAIRMAN. Do you want to try to finish, Mr. Mangelsdorf? I'm sorry.

Excuse me, you wanted to say something?

Mr. PEDERSON. I'm sorry, I know I'm out of order. But I wanted to refer the committee's attention to Exhibit six to the written statement which Ms. Taylor and I have provided this morning. It's a clear piece of evidence which goes directly to what you're referring to. Friends at the RTC giving business to other personal friends on the outside to the detriment of the Taxpayers.

The CHAIRMAN. Pull that mike right around, Ms. Taylor.

Ms. TAYLOR. I would like to add to that. In the Denver office there are several examples of legal business being sent to ex-managers from the legal department of the Denver office. I have not heard of that occurring with ex-lawyer members that were just staff attorneys. But there are several ex-department heads or section chief managers that have received business after they have left from the RTC.

And some of the people that worked for those people have told me that the business that they received was the business that they did not complete or were working on while they were at the RTC in many instances.

The CHAIRMAN. We will go into that when we get to your statements.

Mr. Romer.

Mr. ROMER. Yes. To add to this level of incompetence, at the department head up in Dallas they had an automation committee, which normally takes care of how we can maybe save some money with computer technology. I have been working in computer technology for 30 years. I made a definite request to serve on that committee three different times. I was never given the opportunity and I know the computer capability of the total committee and they know nothing of the industry.

But I was not able to serve. The reason I joined RTC is because of my background. I thought I could make a contribution because I knew we had real record problems coming because I'm a member of the Record Management Association, the independent consultants, and AIM, which is an imaging association. And I thought I could make a contribution, but they would not give me a chance.

The CHAIRMAN. It sounds like that's why they didn't want you. [Laughter.]

Mr. ROMER. Absolutely.

The CHAIRMAN. It sounds like that was your disqualification, that you knew what you were talking about.

Mr. ROMER. I did know.

Mr. MANGELSDORF. I didn't come to speak about computers, but I will add that when we started out, we had this little computer system and then we made this really big computer system. Recently, we decided that was too big and we cut it back. Every time we did that, we incurred extra expenses. Now it's kind of a medium-sized computer system. It did what the little system did, but it just does a little bit more of what it used to do. So I guess we couldn't really decide what we wanted the computer system to do before we ordered it up and just spent money until we figured out how it would work.

The CHAIRMAN. Go ahead, Ms. Crisman. Then we're going to let Mr. Mangelsdorf finish, then I want to get the other witnesses to speak.

Ms. CRISMAN. I would like to add just one comment with respect to contracts flowing to friends and acquaintances.

Most of the examples given here today were with respect to legal contracting. I just want to point out that the procedures for legal contracting are practically nonexistent. Whereas, there are very tight procedures for asset-type contracting. And I personally

haven't found that those procedures allow for contracts to flow to friends and relatives. But I agree that there is a big problem with the legal procedures.

The CHAIRMAN. You wanted to say something. Then we're going to have Mr. Mangelsdorf finish.

Mr. KOSZOLA. Thanks. I never met any of these witnesses before and some of them I haven't known for more than 24 hours. As far as legal contracts, I know personally that in Chicago alone the chief of the legal section was involved in one law firm that was awarded approximately \$3 million in fees. And one contract that he was in the process of awarding to the law firm was a quarter of a million dollars. Just 2 to 3 days after that contract was awarded, he began employment negotiations with that firm. It was a common practice to award all this money to a law firm where they either worked before working at the RTC or worked right after the contract was awarded.

The CHAIRMAN. Senator Metzenbaum, in particular, has really tried to track down these legal contracts and the fact that so many of them seem to be excessive on their face. There are a lot of questions about the pattern of where these contracts went. But it seems to me that what he's just cited sort of fits right in.

Senator METZENBAUM. Absolutely. And, Mr. Chairman, I must tell you that when Bill Seidman took over the chairmanship of the RTC, I thought they were bringing in a class act, a former accountant, to run the RTC. I begged him, I pleaded with him, I knew Bill Seidman before he came to the RTC. He'd been an accountant. He owned some newspapers up in Michigan.

But I have to say to you that this is just such an abomination, such an abdication of responsibility. We have just thrown away hundreds of millions of dollars, billions of dollars, to law firms in this country, that we shouldn't have done so. This is confirming evidence, but the fact is that there's so much more and the law firms of this country have ripped off the RTC and in most instances, it was the major law firms, not the little guys around the corner.

The accounting firms ought to be embarrassed for what they have done to the RTC. And these people again, this confirms it, but the worst part is I don't know what we can do about it. But I would like to suggest, Mr. Chairman, some of what has been said here today, and my guess is some more of what's going to be said, has to do with either violations of the law or that that borders on violations of the law.

We are Members of Congress. We don't enforce laws. But I would like to strongly suggest something that you and I were talking about previously and that is that this entire record be printed up, that the entire statements be included, that you, Senator Kerry, and I meet either with Janet Reno or Phil Heyman, sit down and talk with them.

There have to have been some violations of law in the way the RTC was conducted. And I think going through this record it may not be too late to prosecute some of these people for ripping off the Taxpayers and the Federal Government. I would like to work with you in that connection. And I would like to work with Senator Kerry as well.

I think this does call for law enforcement as well as just exposure here in this committee room.

The CHAIRMAN. Senator Kerry.

Senator KERRY. I was going to recommend that to you, Mr. Chairman, at the end of this hearing of all the testimony. I couldn't concur more with Senator Metzenbaum.

I don't think—I mean, it's clear from other testimony that we have from people who were too frightened to come forward who have also made some very strong statements. So what we are dealing with are not uncorroborated statements here. We have 2- and 3- and 4-person corroboration. And as we all know, that's with staff that's extremely limited up here in its capacity to investigate.

But it is rather remarkable when you have a group of people coming from California, from Georgia, from the central part of the country, I mean, this is all over the country. These are folks, each of whom I think witnessed, by their history, where they've come from, and how they came to the RTC, trying to make a contribution after years of service in the private sector, the public sector, or a combination of the two. There is a universality to the management practice, which contrary to somebody who summarized it in total as being a snake pit, I think it's a cesspool. It's incredible what's going on or not going on down there.

And I gather to date, how many of you are still working there? Raise your hands.

[Show of hands.]

Senator KERRY. Are these things still happening today?

Mr. MANGELSDORF. Yes, they are.

The CHAIRMAN. Let's get audible answers. We won't get the nod of the head.

Mr. KOSZOLA. Yes.

Ms. LEPIQUE. Yes.

VOICES. Yes.

[Laughter.]

Senator KERRY. So for everybody who is still working there, you sense this is continuing. Taxpayer dollars are still being wasted.

Mr. HENDERSON. Business as usual.

The CHAIRMAN. Are you nearly finished? Because I want to go ahead.

Mr. MANGELSDORF. I'm nearly done. Really, I am.

[Laughter.]

The CHAIRMAN. We have four more and I want to get them in and we are under some time pressure.

Senator METZENBAUM. Do you want to give us the specifics with respect to that sale at the asking price and that it was turned down? That was just an incredible situation. Make that available to the committee.

Mr. MANGELSDORF. Senator Metzenbaum, that's common practice.

Senator METZENBAUM. To turn down offers at the asking price?

Mr. MANGELSDORF. Absolutely.

The CHAIRMAN. Where do the asking prices come from? Why are they setting the asking price at a certain level, then somebody shows up ready to buy it and then they back away? I think people find that—

Mr. MANGELSDORF. It's very uncommon for the RTC to swing at the first pitch.

The CHAIRMAN. Even if they've set the asking price and somebody walks in that's willing to pay it?

Mr. MANGELSDORF. The thought would be that if somebody is willing to pay the asking price, obviously the asking price is too low.

The CHAIRMAN. So let's ask a price that somebody is not willing to pay?

Mr. MANGELSDORF. You bet. Let me just go ahead and finish up here.

[Laughter.]

Mr. MANGELSDORF. Another avenue involves structured sales transactions. This is where the RTC evaluates property based on its income and not its market value. This leads to more discounting compared to the true value of the property. Because of the extended escrow periods, straw buyers, and secrecy involved with these transactions, it takes more than a year to close.

Local communities feel that the RTC's continued discounting practices, with the option of structured sales, are depressing an already fragile marketplace. Where I live, Los Angeles, it's started to look like a ghost town.

I don't think it's too late to reengineer this process and I do think that RTC stands ready to change. That's probably the rank and file for the panel here. I think, by the way, I can speak for the panel, we would like to join you all in a corrective process. I know that I would and I think everybody here would too.

Thank you for the opportunity to speak.

The CHAIRMAN. Mr. Burnside, we would like to hear from you now.

STATEMENT OF THOMAS BURNSIDE, RESOLUTION TRUST CORPORATION, SENIOR ATTORNEY, RTC PLS PROGRAM [FORMER EMPLOYEE], DALLAS, TX

Mr. BURNSIDE. I was in RTC in Texas in the Professional Liability Program. I was in the Professional Liability Program before they had the big expansion. I was one of the original 17 attorneys. I was in Texas the entire time that the RTC was investigating Texas S&L's.

And, Senator Metzenbaum, you had read something from the presidential commission that said in general terms how bad things were in Texas as far as the S&L's. You have no idea how bad it was and how bad the looting was.

I was going through some numbers. Forty-one percent of all of the losses from S&L's were from Texas. Forty-one percent. I started calculating some numbers to see what that meant. Every man, woman, and child in the United States is going to have to pay \$2,200 for Texas S&L's. That's not Texas banks, of which nine out of 10 failed. It's not the other 49 States. \$2,200.

Well, I was there when we were trying to recover the money. My cases represented 73 percent of all the RTC professional liability recoveries in Texas, 73 percent. I went through and looked at the published RTC figures on recoveries of the directors and officers

cases that were brought in Texas. Of that \$2,200, four cents of that was recovered from the directors and officers.

Of the attorneys in Texas who had papered all the deals for an entire decade, one penny of that was recovered. Of the securities brokers and the investment bankers in Texas who just looted it—I mean, if you’ve ever read Liar’s Poker, on Wall Street they were making jokes about how easy it was to go and get Texas money. There was six cents from them. There was 21 cents from the accountants.

There was a lot of real estate problems in Texas. You’ve all read Inside Job. In that, there was one tenth of 1 percent that was recovered from the appraisers.

All told, there was 36 cents recovered from the wrongdoers in Texas by the RTC. Now, the FDIC was down there too and they were working on it. But I worked side by side with some of those FDIC people. They didn’t do a lot better.

If you go and look at those recoveries, there was almost no recovery. Why was that? There were a lot of reasons. But I would like to talk about three. The most egregious was it just wasn’t investigated down there.

The CHAIRMAN. Say that again.

Mr. BURNSIDE. It wasn’t investigated down there. The RTC has been down in Texas for 4 years and they’ve got this recovery to show for it. Sure, they will probably get some more recoveries. Guys, the statute of limitations has expired. It expired for most of the thrifts a year ago. The story is over. Now we’re looking at it.

But as far as investigations, Senator Kerry, I think you said you were a prosecutor. You know how important subpoenas are to go out and get information. You go into a billion dollar thrift, you got a bunch of dead records there. You’re not going to understand that thrift until you get out and understand what happened, talk to the people, go out and find documents.

You know, the biggest thing you do when you are investigating is follow the money trail, figure out where the money went, then you build your case. The only way you can follow the money trail in Texas or anywhere else is to issue a subpoena.

If I want to go down the street to a bank and get some tracing records, they say, send me a subpoena, which is fine, that’s what the law says. Well, let me tell you how little the subpoena power was used in Texas. In the Houston field office in Texas, which was handling I think about 37 or 40 thrifts, they issued three subpoenas out of the entire office. Three subpoenas. Do you think those institutions were investigated?

In Dallas where they had the largest bank fraud task force ever formed by the Department of Justice, that office issued 43 subpoenas. There was no investigation down there. And then when the limitation expired, people would write these memos saying there doesn’t appear to be enough evidence to support a viable claim.

Let me ask you, if you sent out three subpoenas, what kind of evidence is there going to be? There was none.

In Houston, there were three subpoenas issued. I had one case in Houston where I issued 100 subpoenas on one case. I followed the money trail. When I went to the settlement table, I had the people on the other side, and whenever they would talk to me

about a case, I would say, look, we've talked to those people, we know, we've got the money. We ended up settling the case.

Hundreds of subpoenas on one case, and three for the rest of the office. What the hell happened?

There's another case in Texas, and I will talk about this later, but it just shows you how important the subpoenas are. This was a pretty quiet thrift in Texas, no one had ever really heard of it. It was unique in that it wasn't even Federally insured until December 1986, which meant the Taxpayers were not even on the hook for that institution. December 1986, it failed.

The CHAIRMAN. Could I stop you just for one minute?

The 41 percent was the figure you used of the total losses in the whole system that came from Texas. Virtually all of that came from State chartered thrifts in Texas as well. In other words—

Mr. BURNSIDE. That's exactly right. I don't recall ever running into a Federally chartered thrift down there.

The CHAIRMAN. So there was this quirk in the law where the State could give an S&L a broader charter to do additional things than the Federal charter would allow. And, in fact, the vast number of losses took place in those State chartered thrifts.

Nevertheless, it was all covered by Federal deposit insurance. That was one of the gaping holes in our regulatory system which we've since dealt with. But that's what really set the system up for these kinds of absolutely astronomical losses. But go ahead and then I want to pursue something with you here in a minute.

Mr. BURNSIDE. Senator, they not only gave them broad charters, they gave them a blank check.

But on this other thrift I was telling you about, on this thrift, I was an inside Government attorney. I probably spent a thousand hours working on this one case alone. It was a big case for me, it was really important to me. We issued subpoenas on that, we went out and talked to people.

Just a few weeks before the statute of limitations expired, we finally got hold of the auditors workpapers of the holding company and, as much as we knew there were problems in this thrift, we were absolutely stunned to learn that two of the officers in the holding company were minority owners of the thrift, and had pulled out \$18 million in compensation and stock benefits and that sort of thing in an 18-month period. If we hadn't issued the subpoenas, we wouldn't have known about that. We had to follow the money trail. Once we followed the money trail, the whole case came together.

Yet, I get back to the fact, how are you going to investigate these institutions unless you're following the money trail and getting out there and figuring out where the hell the money went.

The CHAIRMAN. Who was tanking these cases or this investigative effort? It sounds to me, with so much money at stake, that it almost takes conscious decisions to not do the work as opposed to, you know, just people being asleep at the switch, especially when there are people like you working day and night to try to track this stuff down. What was going on here?

Mr. BURNSIDE. Senator, I was just a line attorney. I don't know what happened. Any time that people ask me the intent question, I truly don't know.

One thing I can say is that I have been practicing law with the directors and officers in the professional liability area my entire career. That's what I have been doing for the last 11 years. The FDIC has always taken the position in those cases that people intend the natural and probable consequences of their act, and that's how people prove intent. You don't have the smoking gun memo that says, let's tank the program. You go and look at the consequences and then you look at the foreseeability of that.

Senator KERRY. Did you ask for subpoenas?

Mr. BURNSIDE. I was issuing subpoenas.

Senator KERRY. Were they being asked for in these other cases?

Mr. BURNSIDE. Not that I know of.

Senator KERRY. Why not?

Mr. BURNSIDE. I have no idea.

Well, Senator, if I could, Senator Kerry, subpoenas were being asked for. The investigations unit down in Texas was begging their attorneys to issue subpoenas, absolutely begging people because they would be looking at records inside the thrift and they couldn't go outside and figure out what happened until they got the subpoenas.

They were told by one professional liability manager down there that he didn't want to send out subpoenas because, "it would send out the wrong message." He came to me. He was flabbergasted. And he said, Tom, what kind of message are we trying to send out by not sending subpoenas?

The CHAIRMAN. Let me ask you this. I understand you graduated from a top law school. What law school did you graduate from?

Mr. BURNSIDE. Washington University in St. Louis.

The CHAIRMAN. Am I right in understanding you were 18th in your class?

Mr. BURNSIDE. That's right.

The CHAIRMAN. So you bring very considerable legal skill, at least based on that placement.

Is it your sense that there were hot cases down there that were not pursued because either they were likely to lead to people that would be embarrassing or things of that kind? I'm not asking you to surmise what you don't have any basis to do so with some meaning. But it's so implausible that people who are hired to track down the losses and who are asking for the subpoenas are shut down and not allowed to do so. There has to be a reason. I'd like to know what the reason is. Was it because people were being protected? What was going on here? What's your best judgment?

Mr. BURNSIDE. Senator, I really don't know. I will say, and I was going to deal with this at the end of my statement, I was a pretty damn good professional liability attorney down in Texas and I worked real hard with the investigators, I worked real hard with my lawyers. And on the case that I was telling you about where we had found this \$18 million, we went after those people pretty hard. I mean, we wanted to get some recoveries and in fact the recoveries out of that case are second only to Lincoln Savings for the RTC.

One week before the statute of limitations was supposed to expire, 1 week, and we had gone through several other agreements and we were going to go to court on it, I was told to fire two key

fee counsel on my case. I said, it's going to gut my case. I'm not going to do it.

Senator KERRY. Who told you that?

Mr. BURNSIDE. My managers in the legal division.

Senator KERRY. Was there a rationale? Did they offer you a rationale? You must have said, why would they do that.

Mr. BURNSIDE. It was the most bizarre rationale I had ever seen. What had happened was two of the attorneys were working at a large Dallas law firm and were going to move over to a small Hispanic law firm that was working on the case. Essentially what they were going to do was submit their bills to me under a different letterhead. Rather than the big law firm, they were going to submit it to me under the Hispanic letterhead and that firm was going to share in the profits of it. They were also going to reduce their fees because they were going to a smaller office that had lower overhead by about \$30 an hour.

Well, they couldn't negotiate their rates with the RTC and they said, since we can't negotiate the rates, get rid of them and hire someone else.

What I did was, I said, I am not going to do this. I am going to go to the clients, because in the RTC the business side is the client, not the lawyers. I said, they are not going to put up with this.

I was given a written order that I was not supposed to discuss this with the client. I was flabbergasted. So I called Washington and I told them the problem and I said, I am not going to follow this order. It's illegal for someone to tell another lawyer not to communicate to his client.

A few days later, I was given written instructions that I was not supposed to talk to the PLS management in Washington, DC, unless there were two managers in Dallas that were present for each and every conversation. It was a circus. I had a case where the statute of limitations was expiring, it was a high profile case, it took me 5 days to discuss that case with Washington.

So I followed the internal grievance procedure. That became a joke. They assigned the person that was supposed to adjudicate the grievance who was a subordinate and close personal friend of the very person who was giving me the gag orders.

Finally I said, I've had enough of this. I called the General Accounting Office and sent them everything I had.

By this time, the investigations unit in Dallas was absolutely livid about what was going on and they called the General Accounting Office. Within less than 2 weeks of us calling them, they had three investigators down there. They were stunned at what they saw. They went over to the investigations unit.

Senator KERRY. Did you get the case filed?

Mr. BURNSIDE. Actually, we ended up settling it.

Senator KERRY. Before the statute of limitations?

Mr. BURNSIDE. Oh, no.

Senator KERRY. How many cases were lost by virtue of the statute of limitations expiring?

Mr. BURNSIDE. Senator, if you go to the RTC and ask them, they will be able to show you a closeout memo on just about any case and they will say, well, we investigated it and, here, we have a

memo in our file that's dated before the limitation expired that says this case was closed, we didn't miss the statute.

But let me ask you this. If you have an office that's issuing three subpoenas and then they write a memo that says, we haven't found any evidence that warrants pursuing this, is that missing the statute of limitations?

Senator KERRY. Let's come back for a minute. What was the percentage of loss in Texas?

Mr. BURNSIDE. I think it's 41.19 percent.

Senator KERRY. How much is that in money?

Mr. BURNSIDE. Well, I had a tough time finding that. I went to the Stanford—

Senator METZENBAUM. \$51 billion.

Senator KERRY. It's about \$51 billion, correct?

Somewhere in that vicinity?

Mr. BURNSIDE. I would say if you include interest and everything else on that, it's way, way above that.

Senator KERRY. Of the \$51 billion, what is the amount recovered?

Mr. BURNSIDE. In Texas, we have recovered less than \$10 million from the directors and officers. We have recovered \$1.6 million from the attorneys. We have recovered \$150,000 from the appraisers. We have recovered about \$4–5 million from the securities brokers. And we've gotten about \$66 million from the accountants. All told, in Texas, from RTC cases, there have been \$90 million in recoveries as of the last report from the investigations unit.

The CHAIRMAN. And two thirds of that from the accountants?

Mr. BURNSIDE. That's exactly right.

Senator KERRY. Let me just add you're saying that out of 43 savings and loans that amounted to the \$50 billion of loss, only three subpoenas were issued?

Mr. BURNSIDE. Senator, the cases were divided among offices. There were a lot more than 43 thrifts in Texas. That was 43 handled by that office.

Senator KERRY. Forty-three cases in that office. So, out of 43 cases in that office, only three subpoenas were issued?

Mr. BURNSIDE. That's right.

Senator KERRY. Do you happen to know what the record is overall?

Mr. BURNSIDE. I believe that if you were to look at the records for Texas that there may have been about 325 subpoenas issued in Texas institutions, and about 240 of those were issued by me.

[Laughter.]

The CHAIRMAN. If I may say, what you are describing is the Government, in effect, taking a dive here in terms of not aggressively going out and doing what it was charged by law to do. We wrote a law right here in this room to put people like you to work doing exactly what you're trying to do and we also provided a special grant of appropriations money to the Justice Department to hire the people to go out and literally track down these losses of the kind you are describing.

What it sounds like to me happened here was that somewhere along the line the inference is—I certainly draw the inference—that somewhere along the line the decision was made not to ag-

gressively pursue these cases, not to do the logical things to do when you're out seeking financial recoveries.

Even in the case where you were hot on the trail of one and you put the subpoenas out and you built your case, then you ran into these roadblocks right at the very end that seemed to be impossible to understand in any logical sense other than the fact it looks like they were trying to sidetrack your effort or stall your effort and maybe run out the statute of limitations.

I want to know what was the name of that case?

Mr. BURNSIDE. Could I tell you in chambers, because I am not sure at this point that it would be appropriate for me to identify the case that specifically? I just don't know.

The CHAIRMAN. All right. We'll do it that way and then we'll make a decision.

What I want to know is, I want to know who these officers and directors are and I want to know who the officers and directors are in the other cases where, in effect, nothing was done and where, in effect, the Government ended up taking a dive, letting the statute of limitations run, getting these inconsequential recoveries when you look at them in the face of the scale of the losses.

You know, this has cropped up in here before a different way, because there has been a lot of discussion about whether we should have extended the statute of limitations, especially on officers and members of the boards of directors, to go back and catch people who either were complicitous in this decisionmaking or were just derelict in their duty and were, in effect, there and not performing as they should have.

That's a very hot issue because a lot of those directors are high profile people. They are prominent people, they are politically active people. If you go out and throw the net out and you grab that crowd, you set off all kinds of shock waves, all kinds of repercussions. And we're talking here about one State. We're talking about Texas, which is a State with the lion's share of the total losses for the whole country.

And, I suspect, when you look at the names and faces and relationships, you're talking about a very potent sort of cross section of individuals, a lot of political implications, particularly at that time and in that place. I mean, am I not describing accurately the situation?

Mr. BURNSIDE. I understand what you're saying.

The CHAIRMAN. That's why I think we need to know. The worst of all sins here would not just be the failing to perform and to go out and, in effect, the Government taking a dive and not seeking these recoveries on a timely basis and letting the chance for recovery get away. But the worst of all worlds would be that all of this was parked in an unmarked grave so nobody ever knew or understood any of it. It was all just tossed over the side and we go on to new business.

It seems to me at a minimum, both for the sake of the losses that took place and also for people like yourself who did the best you could to try to go out and do your job and were thwarted, were actively thwarted from doing your job, somebody ought to be held accountable at whatever level up and down the chain of command that kind of obstruction was coming from.

If people walked away because they had special connections or because they were somehow in a favored position and the statute of limitations was allowed to run, I think we ought to get to know about it.

Senator KERRY. Let me add to that, Mr. Chairman, and I applaud what you're saying. But you said that two of the officers were compensated for \$18 million each?

Mr. BURNSIDE. That's with stock options and everything else.

Senator KERRY. For the span of a year-and-a-half? This is in a savings and loan. This is not Disney Corporation or some major venture capital effort. This is a savings and loan.

Mr. BURNSIDE. They ran it up through the holding company. That's correct.

Senator KERRY. Within a savings and loan for 18 months, \$18 million for that period. For each of them?

Mr. BURNSIDE. Combined.

Senator KERRY. This is what you uncovered, only by virtue of the subpoena, correct?

Mr. BURNSIDE. We never would have known if we hadn't subpoenaed it.

Senator KERRY. So for all those other banks, for all those \$50 billion of losses, we don't know how many other officers took \$18, \$20, \$25 million or whatever it was over similar spans of time. Is that accurate?

Mr. BURNSIDE. That's correct.

The CHAIRMAN. Excuse me. And they still have it?

Mr. BURNSIDE. That's exactly right. These people had the money when we were going after them. They didn't have all of it, they didn't even have most of it, but they still had money.

Senator KERRY. And you described it earlier, I think accurately. This is not compensation. This is looting. Because who has turned around and made up for that "compensation" that they looted over the span of 18 months but the average Taxpayer of this country, who had to bail out the people who lost the money that they looted, correct?

Mr. BURNSIDE. Exactly right.

Senator KERRY. Here you are. How many years had you been practicing at that point in time?

Mr. BURNSIDE. Eleven years.

Senator KERRY. So 11 years, you're a young, aggressive attorney, who saw this as an opportunity to really practice your profession, correct?

Mr. BURNSIDE. That's correct.

Senator KERRY. You come in and the system thwarts you.

Mr. BURNSIDE. That's right.

Senator, if I may, I'd like to complete my story.

We went to the GAO, the investigations unit who had been watching this thing going on and had been pleading for subpoenas, all came forward as a unit. One by one they went through and said, look at what happened in this case. The next day they came over to the legal division. I had prepared a memo which I have submitted in there that said, this is what happened with the Texas cases. I then went back to St. Louis for the weekend to firm up coming back to my old law firm.

The Monday when I got back into the office, my superiors who were the subject of my criticisms came in and said, we understand you're thinking about resigning. I said, that's right. They said, well, when do you think you'll leave? I said, I've got 20 institutions with billions of assets. I'll work with you on a leaving date so we'll have a transition. They said, that's not necessary. We want you out now.

My computer was shut off while I was in the office, I was locked out. The investigations unit was livid. They sent over five investigators with boxes. They were going to move all of my files over to the investigations unit so I could continue working on the cases. We ended up not doing that. But I did go over to the investigations unit and finished out my Government career, locked out of my office, over in another building. I finally left.

I had 73 percent of all the recoveries in Texas and I was locked out of my building when I reported my superiors and said, why are they making me fire my counsel.

Senator KERRY. Who locked you out?

Mr. BURNSIDE. Arturo Vero-Rojas was the general counsel and he had three levels of subordinates under him that were all part of the decision.

The CHAIRMAN. It should be noted for the record that in 1991, 2 years ago, you received an award from the FDIC for sustained superior performance. Is that correct?

Mr. BURNSIDE. That's correct.

The CHAIRMAN. I think what you're telling us is that there's a huge story here. The question is, is there any way to go back and get it now? I mean, dig out what happened, who took the dive, why, who was protected? You know, who was allowed, in effect, to make off with the money?

You'd have to look at all the holding companies, wouldn't you, in effect to figure out the answer to Senator Kerry's question, who actually grabbed these large amounts of money and ran?

Mr. BURNSIDE. Follow the money trail wherever the trail takes you.

The CHAIRMAN. But it sounds to me from your experience that you went down to do that and the people that you were working for really didn't want you to do that.

Mr. BURNSIDE. Some of them did, others didn't. I don't know what happened.

I will say this, if you want to find out what happened, go down to the line investigators, the poor people that were sitting in there with the documents trying to put together the case. Those people worked like hell trying to put together those cases and were frustrated. And when I was locked out they came, to a person, to my support and they are being brutally punished now for that. But if you want to figure out what happened in Texas, go down and talk to those people and they will take you case by case, memo by memo on each case of what was happening.

Senator KERRY. I think you hit the nail on the head. I mean, I can tell you and I think I have had this conversation a little bit with some folks here previously in discussing this issue. But, you know, there is a difference between a legitimate investigation and a lot of what we see in this process. We saw that in BCCI, we saw it in a lot of narcotics efforts 5 or 6 years ago. You know, there is

just a distinction between saying we're looking at something in a legitimate aggressive effort that issues subpoenas, calls people in, and sends out a message of its intent to get to the bottom of something.

I mean, I have seen it. I have presented evidence to a grand jury and I know the difference of what you can do if you're plotting carefully and thinking carefully with a strategy of where you submit a subpoena when and how you're going about building that trail that you've talked about. That just has never happened in this. It hasn't happened.

Billions and billions of dollars, an extraordinarily obvious political interconnecting network. And somehow, somewhere, this thing got shut down. I think, you know, I'm not one of those who leaps to theories around here, but I think it's one of the great untold as yet, un-fully discovered, and unwritten about coverups and there was a lot of very careful obfuscation that targeted other folks and did a lot of other things to kind of cloud the trail during a period of time here.

But, you know, when somebody of your capabilities is telling us a story that you are handling 73 percent of this stuff and you've got three subpoenas out in X number of cases, I am frankly mind boggled when I think about what the repercussions of that are to the taxpaying citizens of this country, not to mention just the system.

You know, all of you are just living testimony to the lack of credibility in the system today.

The CHAIRMAN. And more than that, it goes back to this question of how much of this is just sheer incompetence and how much of it is deliberate tanking of serious effort, because that is obstruction of justice. Laws were written to empower you to do exactly what you were trying to do. We appropriated money to provide for the kind of legal talent that you represent to go out and do exactly what you were doing, and that's to follow these money trails, track down these cases and get the financial recoveries.

So to the extent that that was thwarted, it was thwarted consciously and actively by anybody up and down the chain of command, that clearly obstructs the process of justice that we had set in motion. That's not—that can't be excused by just sheer incompetence or stupidity. You're describing a pattern that, to me, has to be a conscious pattern, not just a random accidental pattern.

Mr. BURNSIDE. Senator, to the extent that you're following that trail, I was just a line attorney, so I don't know what was happening at the higher levels, but if you take a look at that reorganization that happened in 1992 and you look at what that did to Texas and a number of turnovers that you had on cases—

Senator KERRY. Let me interrupt you there. It's my understanding that they're shutting down the PLS now with a second reorganization. And even as we're sitting here there is a process that is going to diminish even what is left. Is that accurate?

Mr. BURNSIDE. That's exactly right.

Senator KERRY. So even as we sit here there's another sort of process going on that is going to diminish the ability to get the repatriation of money back. Is that right?

Mr. BURNSIDE. That's correct. Senator, to my count, there have been five reorganizations, some major and some minor, on the attorneys handling the S&L cases in Texas. Five reorganizations. What kind of continuity do you have on those cases?

Senator METZENBAUM. Mr. Burnside, isn't it a fact that the man who hired you, Arturo Vero-Rojas, is he the man that fired you?

Mr. BURNSIDE. He didn't fire me. They just locked me out. I was going to resign anyway.

Senator METZENBAUM. But he's the one that failed to give you cooperation so you could go forward?

Mr. BURNSIDE. That's right.

Senator METZENBAUM. Where is he now?

Mr. BURNSIDE. It's my understanding that he's been detailed to Washington. I don't know what he's doing here. My immediate superior in Dallas was subsequently transferred to Washington and I understand the RTC places a \$55,000 cost for each and every transfer. They're transferring the people out of there. I don't know why, but they are transferring people out of there.

Senator METZENBAUM. They're bringing them here to Washington?

Mr. BURNSIDE. And bringing them to Washington.

Mr. MANGELSDORF. Good luck, Mr. Metzenbaum.

Senator METZENBAUM. Mr. Chairman.

The CHAIRMAN. Let me just say this to you, Howard, and to John and all of you, because we happen to care very much about what we're talking about here and we've got a nominee pending for the RTC. I don't intend to confirm anybody, I don't care who it is, until we have a plan here that's going to put a stop to this kind of thing, period, once and for all, and I want the attorney general to be part of it, as we have discussed, and every other official of the Government needs to be part of it. We are not going to just roll along with this kind of a situation out there and good people trying to do their jobs being harassed, thwarted, locked out, blocked. And nobody ever able to quite figure out where the signals are coming from to put in the fix. But we have to figure out a way to change that.

Senator METZENBAUM. We will work together to get the Department of Justice into this matter. But I want to say to the chairman something I commented on earlier.

The present administration is not doing all that they could do or should do with respect to these issues. As a matter of fact, the present administration has opposed the extension of the statute of limitations in the matter of making it retroactive. I do not give them any credit for that. It is my considered opinion that the President does not have the slightest idea what's going on.

But there are people in positions of high authority who have actually opposed the effort to extend the statute. And when I have gone to the floor on that issue in the past, both you and Senator Kerry have been very supportive. But the administration has not been.

We have a difference of opinion with the House because the House didn't accept it, and how could we expect them to when the administration was not doing its job.

So I say that, although I support the President, he doesn't know that this is going on. The Vice President doesn't know. But those

who do know, and I will be pleased to tell you who they are privately, they know and they haven't been on the side of the Taxpayers. They have been on the side of protecting the officers and directors who have ripped off the system.

The CHAIRMAN. Mr. Burnside, have you finished or do you have more?

Mr. BURNSIDE. I have a few more remarks. I will just briefly conclude.

The failure to investigate is obviously the biggest problem. The second problem was the reorganizations. You know, when you're putting together groups of people to go in and investigate billion dollar thrifts, you just can't simply pass the file on, no matter how good the people are.

The CHAIRMAN. Might this not have been deliberate? We had hearings in here before. We've talked with some of the other people who are witnesses here today and the clear appearance to me, at least, was that some of these reorganizations were actually a kind of a cover to get people like you off these key cases at key times.

In other words, we've heard that from other people who were out there trying to do these kinds of things, who feel as if their job assignments were being shuffled at a particular time, essentially to thwart them from getting their job done, and it was being done in the name of reorganization, which gave it kind of a surface legitimacy. But it was basically to yank people off cases because they were about to nail somebody.

Mr. BURNSIDE. I can't disagree. There was certainly a vendetta in the RTC to get rid of professional liability attorneys.

The CHAIRMAN. You finish any other remarks you want to make and then I want to go to our next witnesses here.

Mr. BURNSIDE. The last thing that I would say is, I was locked out. I am gone. I am going back to practice with my old law firm, so this is over for me.

But there are good people down there in Dallas who have stood by me and have come forward and have cooperated with everybody that's come down there. They have cooperated with the GAO, they did everything they were supposed to internally. They cooperated with your staffs, and they are being brutally punished down there for standing up and saying this is wrong.

To give you an example, and this is so absurd, there were three managers in the investigations unit down there who showed up as a group and supported me. After this whole thing was over, they sent in the people from Kansas City to supervise these people and now they've got nine management positions down there.

To go from three managers to nine managers and they're cutting back staff. You think those people aren't being punished? Talk about reinventing Government, you know, downsizing your staff and tripling your management, that makes no sense.

The CHAIRMAN. I think we'll call those three up here and give them a chance to get out and tell their story in the light of day.

Mr. BURNSIDE. They'd be wonderful witnesses.

The CHAIRMAN. I suspect they will.

I want to be able to juxtapose what they say to the managers who have been making your life miserable. I want to yank them out into the light of day too.

Mr. BURNSIDE. The last thing I would like to do is just conclude with this comment. After I went back to St. Louis, I received a package at my law firm. I opened it up and inside was a simple portrait. It had a simple black frame, a white background, and letters saying "he who is silent is understood to consent." And I got that from the Dallas management of the investigations unit. I did not consent. The people down in the investigations unit did not consent.

The CHAIRMAN. I also want to use this moment through you, to you and your colleagues and anybody else out there in the ranks, that we want all the information that anybody has. I want people coming forward. I want them to come forward anonymously, if they are more comfortable with that, to give us what facts and information they have. I want those who are willing to come forward openly with whatever they have.

But I want to make this an open request and invitation to every person out in the RTC that has other factual information of this kind that would fit these patterns with times, names, places, circumstances to get that information to us. That's what I am asking for. This is a blanket request out through you to all your colleagues out there so we can assemble as much of this information as we possibly can.

Mr. ROMER. I would like to add just one comment to him, since I have dealt considerably with the legal department that he's talking about.

The general policy was, if you had a simple one-page contract, you take it down to legal and they'd assign it to an outside firm and in a few weeks or days it would come back and they'd OK it and they'd bring it back to you. But one that I'd like to point out significantly, when I was refusing to give a contract to a vice president of a savings and loan and they called me in and they said, you can go ahead, and I said, over my dead body I'll give them a contract because they're illegal.

I was called over to an outside law firm to discuss, you know, why I was doing this. And I said, well, I was in charge of the registration. It says in 1606 you've got to list any savings and loan that you were in in the last 5 years, you've got to write it down and give the list. And I said, that's what they didn't do. In the verbal and the whole thing, they covered it all the way.

Chicago was forward enough to turn them down, but Dallas wasn't. They had too many friends down there.

But, she says, that's not right because, yes, it does say you have to list, you know, the 5 years. They're listed on the front of the program because they own the program. So they're listed over here. But it doesn't say anything about savings and loans. She said, no, it doesn't say that. It says you have to have them on a list somewhere.

I just threw up my hands and went away. That was not the intent. The intent of the law was to list if you've been in a savings and loan for 5 years, not just listed on a back page with a list of people, of employees, that doesn't cover it. That is not the intent of the 1606 written by Congress, but that's the way it was interpreted by outside law firms. And most of our attorneys assigned the work outside and served as clerks.

The CHAIRMAN. We must in the interest of time go forward now. Mr. Pederson, you've been here before. You were a very important and helpful witness the last time. We told you we were going to follow up on this. We hope today's hearing is evidence of the fact that we meant what we said.

Then we want to hear from Ms. Taylor, who has also testified here before and we have been grateful for that.

And, finally, Mr. John Waechter will be our last witness.

Go ahead, Mr. Pederson.

TESTIMONY OF BRUCE J. PEDERSON, RESOLUTION TRUST CORPORATION, ATTORNEY, FORMERLY IN RTC PLS PROGRAM, DENVER, CO

Mr. PEDERSON. Thank you, Mr. Chairman. I wish we could meet under more pleasant circumstances than we've had the last 2 years.

I do want to thank you and the committee for your continued interest. I think it has been considerable and significant. It has played a major role in my ability to stay on the RTC payroll.

I also want to express my gratitude to Senator Metzenbaum for being here today, as well as to Congresswoman Schroeder, both of whom also have taken an active interest in the issues and people involved.

They tell me today is the first day of fall. I want to tell you that I come from a slightly different season of the year. I come from a very long, cold, and dark winter, a winter of retaliation at the RTC. For the last 12 to 15 months, my life has been a living hell at this agency. They have done everything they could to drive me out of the agency or to trump up charges that would enable them to discipline me and hopefully fire me.

I come today with two messages. Message one is that there is rampant retaliation at this agency. This panel has heard eloquent testimony for that proposition. Those who think on their own at the RTC are suspect. Those who question authority are punished. And, God forbid, those who dissent are crushed.

I know from my personal experience, having ridden my bicycle up to the Tiananmen Square at RTC that management's tanks roll freely and with wild abandon. It is a sick and dysfunctional corporate culture which stifles dissent and employee efforts to improve the system.

Message two is, we need accountability. I think Senator Sasser had a most appropriate term earlier this morning. We need "zero tolerance" for the kind of abysmal conduct which management engages in to punish people who, as loyal public servants, are trying to improve the system.

If this agency can't be reinvented with more accountability then, I submit, it ought to be killed. Take its vital programs and give them over to a more responsible agency, which has the mature management team in place to handle these programs in the best interests of the Taxpayer.

By way of brief background, I think it is already well known that I was here last year on August 11, 1992, together with Ms. Taylor and Mr. Bradley Smolkin testifying before this committee in open session that the RTC's reorganization in 1992 gutted the Profes-

sional Liability Program. We later followed up with a detailed 53-page rebuttal statement in November 1992, rebutting each and every one of the RTC's flimsy excuses and rationales for what went down.

We also note with some degree of bittersweet satisfaction that, since those events, two independent authorities have come in and substantially vindicated our testimony from last year. The GAO submitted a report earlier this summer and the RTC Inspector General, regardless of its problems, couldn't ignore the evidence that the program was substantially compromised and that future claims were placed at risk with the arbitrary and ill-advised reorganization of PLS that went down in 1992.

We told you what was coming, but I think the most eloquent testimony this committee could receive has just come from Mr. Burnside. He didn't tell you what was coming. He told you what came. And now you know how the RTC operates and how they tell this committee one thing and proceed to do another. They can tell you they haven't missed a deadline, but now you know why they can make that flimsy and feeble statement. They don't bother to investigate the claims.

Senator Kerry, you're right on. There is an untold story here and we continue to make what efforts we can with our meager resources to fill in those gaps. There's a lot that ought to be found out about an organized lobby out there that's doing everything in its power to put sticks in the wheels of the FDIC and the RTC's Professional Liability Sections in their efforts to recover money for Taxpayers.

Senator Metzenbaum has referred to a trend in the State legislatures to pass statutes which are going to water down the standards of liability. That's yet one more piece in the mosaic which has formed over the last year which allows us to continue making the argument and raising this issue.

Someone earlier this morning made the comment, "judge people's intent by the results of their actions." I think that's damn good advice for the RTC. Look at what the results have produced, and I think that will tell you a lot about their original intentions.

I also add by way of footnote that I have had the honor to serve as Mr. Burnside's grievance representative while he was still employed at the RTC. Notwithstanding the shabby treatment which Ms. Taylor and I have received, I was still shocked by the disgusting conduct which he received from management in Dallas in locking him out, effectively forcing him out of the agency a mere few days after he had openly cooperated with a GAO investigation, an obligation which I think any public servant has.

With respect to the detailed messages I have, number one, retaliation is rampant. Ms. Taylor is going to provide you with a detailed list of all the examples we have endured, and I won't belabor them right now. I simply want to remind you that when you hear that list, in the back of your mind, remember that every time management retaliates against an RTC employee Taxpayer dollars are funding their unacceptable behavior.

I do want to speak very briefly on one type of retaliation, though, which this committee, as a matter of public policy, ought to more closely scrutinize. In addition to the laundry list of reprisals we

have endured, this committee is also aware of the break-in of my computer at the RTC. It seems like management wanted Watergate returned back to the headlines. They effectively, without my consent, without a court order, without a search warrant, got access to my WordPerfect files, files which contained work product and thought process, if you will, and correspondence which I had written between myself and Ms. Taylor and a variety of oversight entities. They included the RTC Office of Inspector General and a law enforcement agency. They included this very committee and its staffers. They included the General Accounting Office, and they included Congresswoman Schroeder's office.

All of those work products concerned public policy issues, whistleblowing efforts on our part, and a general attempt to improve the operation of the RTC.

Management at the RTC saw fit to have free license to just wade in and help themselves. I was always intrigued, whatever the trumped up reason was that they have given this committee and others for doing what they did, why they never came to me and simply asked me, "could we please have a copy of the XYZ file in your WordPerfect which we think has to do with a particular subject." That would have been too decent and up front.

Instead, they had to do it in, I guess, the middle of the night or after hours, behind my back. It raises issues of criminal violations of wire tap statutes that are designed to govern unauthorized access to computers. It raises profound constitutional issues and rights to privacy which may have been violated in this case.

One of the exhibits to the joint statement which Ms. Taylor and I have provided the committee today consists of a detailed memorandum I composed last spring detailing many of these legal issues. And finally there are the public policy issues.

What does this say about Government acting as a "Big Brother" with respect to all Federal employees? Are we going to allow managerial prerogative, whatever that might be, to be stretched to allow any manager to retaliate against a given employee with this tool? I think not. And what does it say about law enforcement agencies and their abilities to work with cooperative witnesses?

My products for the IG were stolen by management, the very targets of my concern. This committee and others on the Hill have had their relationship with me interfered with by the actions of RTC management.

I hold in my hand a memo which I wrote to Congresswoman Schroeder's office on March 12, 1993. To the best Ms. Taylor and I can determine, that's the exact day when my computer was broken into by RTC management. I don't know whether they got a copy of this document or not.

The point is, they were traipsing through some pretty sensitive stuff which I don't think they had a right to look at. I think if this conduct is either sanctioned or unquestioned, it can only encourage a grotesque chilling effect on all public employees.

Message two: Accountability.

The system is broken and the fact that everything you're about to hear from Ms. Taylor could go down is quite persuasive with respect to showing what's wrong right now.

First of all, you've got dysfunctional management. I hope this committee, in confirming whomever becomes the next CEO of the RTC, will pay close attention to the culture of deception which lower ranked managers freely engage in at present at the RTC. They are spin control artists in the truest sense of the word. I hope that you will not be deluded by their efforts to backfill, their efforts to tell you that here are all the facts and at the same time they will be leaving out certain key elements. Take a very jaundiced view to what they tell you based on today's testimony. I think you know why.

The grievance system at the RTC is horribly broken. Mr. Burnside provided you with an elegant example. We, too, have gone through that system to no avail. It needs to be junked. It either needs to be replaced with an ombudsman, an administrative law judge, or some true legitimate third party who will be there to hear both sides of the story. At present, it's a game played by management for the benefit of management.

The OIG has its own problems. Its focus, based on our experience, seems to be confined narrowly to only criminal issues or easy-to-prove cases involving time and attendance.

I will offer Mr. Romer to my right as an example of that mind set.

We believe that the IG does not consider its mandate to include protection of whistleblowers. Whether that's legally supportable or not isn't the issue. It ought to be, and I think Congress through its statutory amendments can change that.

We also have been told by IG agents that they can never even recommend actions to agency management and, if they could, there's no way to enforce it. Perhaps there are ways we can change that with some well placed statutory changes.

With respect to whistleblowers, we know that the Merit Systems Protection Board and the Office of Special Counsel jurisdictionally cannot address RTC employee whistleblowers. They are barred by statute. We recommend amendments to cure that. We also heartily endorse language now contained in the Senate Funding Bill designed to broaden whistleblower protections to RTC employees. At present, those protections are limited only to reports of violations of law. They ought to be expanded to include waste, fraud, and abuse which are all activities that cost the Taxpayer billions of dollars, but which may not necessarily rise to the level of criminal activity.

I will conclude, in the interests of time, Mr. Chairman. Earlier, you expressed interest in Exhibit 6 to our written statement. We will be happy to take questions on that if you like with respect to steering of legal contracts to friends and buddies of legal division managers.

I will just conclude by saying this: In my opinion, the members of this witness panel to the right and left of Ms. Taylor and I are real American heroes. Unlike us who came last year and for whom it's too late to do anything about our retaliation, these people came here today to tell you their stories. They came knowing what happened to us, in spite of knowing how we had been beaten by the RTC. They still had the guts to come here today. And I am in deep respect of that. I think the committee has well recognized that fact.

Over the past months, people have asked me, how do you keep going, how do you keep trying to be the shadow of RTC management, to be their conscience and to hold them accountable? I will tell you, that's a very difficult task. But I have kept a copy of this card up on my desk in my office. It's a Chinese character, which translates roughly with the following expression: "Crisis is opportunity."

This agency is in profound crisis. The waste, fraud, and mismanagement that you've heard about today pervades almost every program in the agency. But I think at the same time, if we look at it from a more positive angle, it's a good opportunity for this committee and the new administration's CEO, whomever that happens to be, to "take the bull by the horns" to try to restore accountability. The Taxpayer and the American people require no less.

The CHAIRMAN. Thank you very much.

Ms. Taylor.

TESTIMONY OF JACQUELINE P. TAYLOR, RESOLUTION TRUST CORPORATION, ATTORNEY, RTC PLS PROGRAM, DENVER, CO

Ms. TAYLOR. I want to thank you, Mr. Chairman, and the committee for inviting me here today. I would also like to thank Senator Metzenbaum for his continuing interest, and Congresswoman Schroeder for hers. All of you have stood between Bruce and I and disaster, at the RTC, over the last year as the RTC management attempted to get rid of us.

By way of briefly explaining my background, I have been a practicing lawyer for over 15 years, both in Government and in the private sector. I have been at the RTC since August 1991, when I was appointed the Denver field office's Professional Liability Section chief.

I served in that capacity until May 1992, at which time the disastrous reorganization of the Professional Liability Section occurred at the RTC. You heard eloquent discussion from Mr. Burnside describing the ultimate results of that reorganization. His comments echoed many of those that Bruce Pederson and I made last year when we testified to you.

When we testified to you last year, when I was here last year in this committee room, I told you about the Taxpayers losing hundreds of millions of dollars to waste, fraud, and abuse as the Professional Liability Section was being reorganized. Today, unfortunately, I am here again. And this time I am here to tell you about waste, fraud, and abuse due to the retaliation against Bruce Pederson and I and against others who question the programs and practices of the RTC.

RTC's pattern is to kill the messenger instead of focusing on the problem. We have heard eloquent testimony from the people here, some of whom have been dismissed for questioning RTC's practices. RTC management has thrown everything they could at Bruce and I over the last year in attempting to kill us. Like Nero, RTC continued to fiddle while the Taxpayers' money was being burned.

The RTC's behavior is chilling. It chills people speaking out. It chills the Senate committee's ability to find out what is going on in the agencies that Congress has created and which are supposed to be accountable to the Taxpayers.

RTC management used a variety of tactics against us and against others in order to chill our dissent, in order to chill our questions. RTC management used tactics to shut us up, shut us out, and shoot us down. This creates silence.

And yet some people, the people who sit at this table, have had the courage to come forward. Like Mr. Pederson, I commend them. I implore you to stop the abuse. Do not let happen to them what has happened to Bruce and to me.

In an effort to get ready for this testimony, I decided that sometimes you can tell what is going on by looking at patterns. The process of retaliating against Bruce and I for our testimony involves patterns. The retaliation has come from many directions and was of many different types. In the process of looking at those patterns, I prepared a time line which is based upon my notes and the documents that are in my possession. The time line shows what has been going on and what has been aimed at Bruce Pederson and at me over the last year-and-a-half since we testified to you and since the reorganization occurred at the RTC.

The time line is in very small print. Bruce and I have attached it to our written statements to you. It is over 60 pages long. It has over 300 entries in it, and it is not all inclusive. It shows extreme patterns and multiple versions of abuse and retaliation aimed at us. It is my opinion that it was aimed at us because we had the courage to step up and say what is going on at the RTC and what is happening to the Taxpayers' interests.

I recommend that you read just a couple of pages. I recognize this is a long document. I mean, it's going to be difficult for anyone to peruse this. It will take hours. And this is what has been going on just to Bruce and I. Think of the money. Think of the loss of money. Think of the loss of morale. Think of the impetus and the impediments that this behavior throws up against the other people at the RTC, who also have stories to tell.

Some of the types of abuse they have thrown at us—There are so many I won't bore you with the list. Some of the more important ones and the ones that I think you will see the negative impact on Bruce and I, are for instance when we were banished from our peers for months on end. At one point, we even received a memo that told us we would be the only two employees in the RTC on two floors, two empty floors, of a large, downtown Denver office building. We were told that we were to forward our telephones to a receptionist in another building because there would be no one in our building to answer our phones if we were using them.

You can imagine what this means if we got an emergency phone call. I swear, we could have had a heart attack in that building and no one would have found us for days. We were going to be the only two people on these two large empty office floors for an indefinite time.

RTC turned around and later rescinded this. But first, they gave us this notice. They told us this was our fate. Then they turned around and they backed off of it. It was like the hostages where they tell you they're going to shoot you. They put the gun to your head. They click it and there's a blank in it. We went through the feelings of utter abandonment and ostracism that occurred when they told us that was our indefinite fate and we sat there for a

week by ourselves. There was one administrative person that would come on occasion. But basically, it was just Bruce and I.

Senator KERRY. So you spent a week there on these two floors?

Ms. TAYLOR. And we were told it was going to be indefinite. There was no time limit placed on it.

The CHAIRMAN. Sort of solitary confinement.

Ms. TAYLOR. Exactly. We had been banished all over Denver prior to that. From building to building, we were always the only members of the only section of the legal department. Our section consisted, at its maximum, of 10 members of the legal department. More often than not, it was more like only four or five lawyers that were on the pull-back list. They would move us from building to building to keep us away from the rest of the legal department.

When we finally were invited to return to our brethren in the legal department after our little exile totally by ourselves, it was late November 1992. It was shortly after the election. Then, they decided to physically return us.

After that, the problems continued. When I was invited back, I had a secretary come up to me and tell me—

Senator KERRY. When was it in November that you were moved back?

Ms. TAYLOR. We were literally moved back—it's on the time line—my recollection is it was a Monday, which I believe was November 24. We were told about our move back to the legal department, I believe, it was the previous Thursday evening. That was the week of Thanksgiving, by the way.

The CHAIRMAN. And the national election had just happened?

Ms. TAYLOR. It had just happened, that's correct. And we had just turned in our testimony to this committee.

When we were returned to the arms of the legal department, I was told by at least one clerical worker, a secretary in the office, that she had been approached by management and asked to keep track of my comings and goings. In other words, I was being subjected to physical surveillance.

She said, no. She said she didn't think that was right. But she wanted me to know because there would be others that probably had said yes.

Our privacy was invaded in multiple forms. I was told by others in the legal department that our telephone calls during this entire period, to and from us, to the extent that they could be tracked, the numbers were monitored—and I am not aware of the computer system. I know that our outgoing phone calls are all tracked. Apparently there is some mechanism for tracking incoming phone calls also. Nonetheless, I was told that this tracking system was in place and that they were watching very closely to see who Mr. Pederson and I were talking to, to see who our friends and supporters were, and who we were in contact with.

Our mail was tampered with. I doubt that there was a single piece of mail that we received over that entire period of time that had not been opened and routed to others prior to us even knowing that it existed.

I had an EEO claim filed against this agency and the very management that I was complaining about was reviewing my mail. They had admitted it in front of other people.

One of the procedural things that occurred during this period of time was that I had to appeal my EEO action within a specific period of time from the time I received notice by mail. RTC managers took my EEO mail and passed it to manager after manager. The notice was ultimately found in another manager's office, on his desk, opened and reviewed. The secretary who gave me that mail was transferred out of the Professional Liability Section immediately upon them finding out that she had done this and after I had just gone to the OIG. She resigned in disgust from the RTC.

There are multiple other employees who have been retaliated against for assisting, cooperating, or being seen with Bruce Pederson or with me. It's guilt by association when it comes to Bruce and Jackie. We have had friends in professional positions in other departments, as well as in the legal department, threatened with their jobs for being seen with us. One person was told that he was associating with the enemy and when you lay down with dogs you get up with fleas. And he was talking about me, the person that made that comment. I was the dog and the other man was going to get the fleas.

We have been bogged down in interminable grievance processes, which is grievance by surprise. The grievance procedures at the RTC are very unclear at best and they do not give any kind of procedural protections.

The RTC has had a history in its grievance process of stalling and stalling and failing to discuss anything with us. Then RTC turns around and imposes impossible deadlines on us. Deadlines that take away any rights we would have or any remedies of redress we would have from the process.

My EEO claim includes the fact that when I was the PLS section chief under John Beaty, I was one of seven, I believe, women managers. After the 1992 reorganization, I filed an EEO complaint based on the fact that only one female manager remained in the Professional Liability Section. The RTC management has resisted throughout all of this, the attempts by the EEO office to investigate this claim and my attempts to seek information related to it.

In one instance, right after the presidential election when I had just returned to the legal department, I asked the administrative unit, in writing, multiple times, to provide me with time and attendance reports from May through November so that I could demonstrate to the EEO how much time I had been forced to take off to pursue the EEO claim. I also wanted a copy of my current job description.

RTC told me, no. They were much too busy to give me what I had asked for. They would not even give me a deadline as to when I could get this information. I told the EEO office this. When EEO asked for the same information, RTC management told the EEO office the same thing and refused to give them the information.

The thing that was very interesting is that during this very same period of time—Bruce Pederson and I worked very late on many nights. During this time, that same administrative legal department office was so busy shredding documents and taking out bag after bag of shredded documents in the evenings and on weekends, that they didn't have time to respond to my or the EEO investiga-

tors' requests for information. I don't know what was in those documents they were shredding.

Senator KERRY. When did—the shredding, I gather, took place right after—

Ms. TAYLOR. It took place over the course of a number of weeks. It started—I don't know when it started because we were in another building. But when we were moved back to the legal department in November, that week of Thanksgiving, it was ongoing. And it continued through December.

Senator KERRY. For the 2-week period or so after the election?

Ms. TAYLOR. Yes, until late December or early January.

Senator KERRY. Was this a regular practice down there?

Ms. TAYLOR. I had never observed it. I don't know. I am not a member of the administrative unit. But it seemed excessive and it was happening a lot in the evenings and on weekends.

Mr. PEDERSON. If I could just add, Senator Kerry, it came to our attention largely because when we came back to the main building, management located me in an office that had been previously used to store cardboard boxes. They kindly took the boxes out, then substituted me. This office was located right across the hallway from the shredder room, which also had a Xerox machine. I had occasion to personally witness high volumes of shredding going on at all times of the day and on those days when Jackie and I would be staying late at work, doing oversight work, if you will, doing the IG's work for them. I would witness these administrative employees carrying in large handfuls of documents and carrying out large bags of trash.

Senator KERRY. This is one of those things hanging out there. I mean, offices all over the Government shred on a daily basis, correct?

Ms. TAYLOR. Yes, they do.

Senator KERRY. Was there daily shredding going on?

Ms. TAYLOR. There is daily shredding going on.

Because of the volume of shredding that Mr. Pederson and I observed on the evenings and weekends at the offices of the Denver RTC, the legal department, we continued to watch for a period of time, at least I did, and I believe Bruce did also, afterwards. And the volume at a certain point decreased.

There is certainly—in the legal department you do shred documents. This was an unusual amount of document shredding going on.

Senator KERRY. Are you saying to us that you watched this because you were particularly struck by the level?

Ms. TAYLOR. Yes. There are many fine employees in the RTC and many of them work long hours of overtime. There are other employees in the RTC that do not put in more than their duty hours. This excessive overtime to shred large numbers of documents was unusual. The people who were doing the shredding were not accustomed to being in the offices that late. Mr. Pederson and I know this because we have always stayed very late.

It was my practice to stay at the office working until 8 or 9 o'clock at night on many nights. So it struck me as strange that these people were staying as late as they were.

Senator KERRY. Was there any weekend shredding?

Ms. TAYLOR. The way I found out about the weekend shredding is that on occasion Bruce and I were there. But I also was told about it by other lawyers within the RTC legal department in Denver. These other lawyers also thought it unusual that these administrative people were staying around on weekends shredding documents. I mean, this was like constant, I'm told, shredding of documents.

The CHAIRMAN. Mr. Koszola, you looked to me as if you wanted to maybe say something at that point.

Mr. KOSZOLA. Not at that point. But the other witnesses, what they've said so far about the time and attendance subpoenas, the investigations, I know first hand about the time and attendance investigations. They tried to stop me from serving a grand jury subpoena that was on RTC personnel. They wouldn't give the documents to the RTC OIG and get a grand jury subpoena. When the RTC found out that they had a grand jury subpoena, they said it was too embarrassing and attempted to stop me from serving it. But I had already served it.

The CHAIRMAN. Did you witness any shredding of the kind she's talking about?

Mr. KOSZOLA. Oh, yes. There was shredding going on when I was at RTC headquarters regarding Gerald Jacobs. He was already cleared on an investigation, you know, maybe a week or 10 days earlier. But they were still investigating him supposedly and shredding documents before I got there. That's what I was told by the managers there.

The CHAIRMAN. Did any of the rest of you run into a burst of shredding activity of the kind that Ms. Taylor has just talked about that would have occurred late last year?

Mr. KOSZOLA. There were documents that I know were missing on sales. They'd sell an asset and a sale could have taken place a month or two ago and the documents would be gone or there would be no documentation. They were supposedly shredded.

The CHAIRMAN. I want to get to our last witness, so Ms. Taylor are you nearly finished so we can get Mr. Waechter here?

Mr. PEDERSON. Mr. Chairman, I just wanted to completely answer Senator Kerry's question.

The other quality about these documents which attracted my attention to the shredding was not only the volume but the fact that they appeared to be originals. One could see in the trash multicolored types of paper that suggested that entire forms with built-in carbon type capabilities were being shredded. And so after the volume became apparent to me, I then poked around in the trash and that's what came to my attention.

Senator KERRY. You were actually so struck by the volume that you poked around in the trash it was producing?

Mr. PEDERSON. That's correct.

Ms. TAYLOR. They're in these plastic bags. They bag up the shredded documents in transparent plastic bags. You can see through the bags what has been shredded. It's obvious. We talked about it, in fact.

We were so concerned about it that I wrote—I have documentary evidence at about that time, where I wrote to the EEO office say-

ing: "I can understand why they won't give me my information, they're too busy shredding documents."

And in the March 12 memo to Congresswoman Schroeder's office that Mr. Pederson has discussed, we again raised the issue of shredding of documents at the RTC office. It struck us as very unusual. I, myself, and everybody else there, if you're in a sensitive position, occasionally shred documents, but this was unusual.

There were many other types of retaliation, such as geographical relocations. You're well aware of these, since this committee has tried to help us in that matter. We were demoted while the very people that were harassing us were promoted, given large bonuses, and were subjected to all sorts of praise. They were encouraged by these rewards.

I mean, the message that the unrestrained retaliation sent to the rank and file is that these RTC managers were doing right by harassing Bruce and Jackie.

One of the more difficult ones for me to withstand has been the slander that has been thrown at me by members of RTC management. I hear from people in Washington, DC, and other parts of the country, about outrageous statements made concerning Bruce Pederson and me. One of the ones that upset me most of all was made shortly before I decided I was going to take a 2-month unpaid leave of absence from the RTC because I was just exhausted. The press office of the RTC told a national reporter that: "He should go talk to Mr. Pederson because he thinks he's Gandhi."

A comment that Mr. Pederson had made at the Cavallo Award presentation was that he admired Mahatma Gandhi's mechanisms. He admired the nonviolent ways that Gandhi approached public dissent and questioning of improper practices. The press office apparently felt that this was sufficient basis to make what I consider to be a very slanderous comment to the press about Mr. Pederson.

I could go on and on and on, but I won't bore you with the rest.

The CHAIRMAN. We'll put it in the record. I want to read it all.

Ms. TAYLOR. The time line is in the record. And, like I say, it's not all inclusive. I just want to beg the committee to help somehow, either in the confirmation process of Mr. Tate or in the drafting of legislation, or in any way they can, to halt such retaliatory practices. Please, please, do not let them do this to the rest of the employees at the RTC. The committee's work will be so hard if this continues to go on in Government. There should be zero tolerance for this behavior.

Also, I really would prefer not to have to come back here again next year to testify. It's been a long and debilitating process and I hope that somehow we can correct these problems so this doesn't have to happen again.

Senator KERRY. We'll just put you all in charge of the RTC.

Ms. TAYLOR. Thank you.

The CHAIRMAN. Mr. Waechter, you're last but by no means least. We'd like to hear from you now.

TESTIMONY OF JOHN WAECHTER, RESOLUTION TRUST CORPORATION, COMPUTER SERVICES SPECIALIST, DENVER, CO

Mr. WAECHTER. Thank you, Mr. Riegle, and your committee, for providing me this opportunity to testify here before you today. My name is John Waechter.

As Bruce Pederson stated, I am the systems administrator in what has been called the Computer Gate scandal.

I worked for the RTC information service unit at the Denver field office. For almost 3 years, I have been a devoted and highly recognized employee of the RTC. I stand before you today to tell you about the Computer Gate incident and the actions taken against me.

My parents brought me up to tell the truth and to accept the consequences. In this Computer Gate situation, I asked myself, why am I getting fried for telling the truth? Is it guilt by association? All I had done was blown the whistle on an ethical issue. I had been cleared of all wrongdoing by the Denver Inspector General's office, although I have not received any paperwork on this.

This nightmare started March 12, 1993, over 6 months ago. I was called into the office of the Denver legal assistant general counsel, Barbara Shangraw. She informed me she was being directed by someone in the Washington, DC, RTC office to retrieve the files of counsel, Bruce Pederson.

I trusted Barbara Shangraw's knowledge of professional ethics and morals, not only because of her senior level position but because I assumed she was a competent lawyer. I was wrong.

I was shocked by this request, given the fact that I knew Bruce and Barbara were involved in a conflict. I requested an electronic mail message from Barbara Shangraw before I would fulfill her request.

After I received her electronic mail request, I proceeded to copy all of the personal files of Bruce Pederson into Barbara Shangraw's very own directory. After all the files were copied, I began to feel as if I had just violated the privacy of an individual's rights.

The CHAIRMAN. Just take your time. I appreciate the fact that you are here to tell us this and it's important. Take your time.

Mr. WAECHTER. I left the office for the day and thought about the situation on my long drive home. I mentioned the story to my wife who, just as I, felt this was an invasion of someone's rights. My wife advised me to talk to someone at work on this matter.

I spoke with Jackie Taylor, another counsel of the Denver legal department, about this situation. She advised me to immediately report this incident to the Inspector General's office in Denver. The situation was reported to the IG and, from that time on, my life and my job have gone bitterly to hell.

Retaliation started almost immediately after someone had leaked the investigation to Barbara Shangraw. I have been receiving and continue to receive verbal harassment, removal of job duties and special tasks, false accusations, denial of overtime, and loss of training, and I fear my livelihood is in jeopardy. I have been retaliated against by management for my actions. My question is, why? I do not know.

In closing, my image of the RTC has been shattered like glass. I am asking you for your help to pick up these pieces and try to put them back together again as best as we can possibly do.

Finally, I would like to say I am sorry for not being able to stand up and say no to something that I believed was wrong, something that was an act of terrorism to Bruce, of personal terrorism, to Bruce Pederson. Again, I stress I believed in Barbara Shangraw's professional ethics and morals and her position that she was correct in instructing me on what to do.

The CHAIRMAN. Let me just tell you, I appreciate your courage in coming and saying it today. The fact that you've said it today, I think, says everything that needs to be said. You've said it in a fashion that makes it clear how you feel. I appreciate your coming forward. So that is an act of courage. You should feel good about that and good about yourself. And we feel good about your being here.

Senator METZENBAUM. Mr. Chairman, I feel pretty bad that our Government—damn it, this is horrible for these people to have to come before us here and speak out this way. Where the hell is the RTC? What are they doing? What is the Secretary of the Treasury and the Assistant Secretary of the Treasury doing? They have been in charge of this thing for months and all they do is nothing, as far as this is concerned. This is one of the most embarrassing moments that I have experienced since I have been in Government, when people have to come here and talk out about how they have been treated on their job.

I just think this is horrible. And I demand that our Government who, not some months from now, not some weeks from now, but now should clean house with some of these people who have come down so hard on these decent people.

Senator KERRY. Let me ask you a question, John, if I can. Just tell me a little about yourself. What's your background?

Mr. WAECHTER. My background is almost 11 years in the computer industry. I had to drop out of college because both of my parents had passed away and I could not afford to finance myself. I took an entry level job in hopes that I would strive to make ends meet and to keep moving on.

I have never been subjected to such nonsense before in my life. I just can't understand why this takes place and there is no protection for us. As Bruce had stated, the whistleblower act does not do anything for RTC. I was informed after I had spoken to the IG that this was the case.

Senator KERRY. Let me just say to you, I share Senator Metzenbaum's feelings. For somebody who wants to make the system work and somebody who has 11 years of experience and tries to abide by the rules, to have to come before a Senate committee and drag out of your guts a public apology to another employee for something that you knew and felt was wrong at the time—

The CHAIRMAN. And had been ordered to do.

Senator KERRY. —and had been ordered to do, is embarrassing and disgraceful for the Government.

Yet you folks are up here in agony while the folks who are persecuting you, literally, are being promoted and running around without any retaliation.

Now I don't know how others feel, but I think they're the folks who ought to be fired.

Mr. WAECHTER. Absolutely.

Senator KERRY. Something is wrong here. I understand that now they are not, but the accountability process, something is askew here. Even if there was a legitimacy, let's say, to some gripe they had about your performance or your work product or maybe there was, you know, even if there were, this is not the way you go about the process of resolving it in any normal management structure.

Mr. WAECHTER. And unfortunately, I have been removed from my job that I did like. I enjoyed working with the legal department.

Senator KERRY. What was the reason they gave you for removing you?

Mr. WAECHTER. Because Barbara Shangraw had started to make false accusations and called Mr. Del Arnold. I am not sure of his title. And said, he is a security risk for the legal department. I want him out now.

Senator KERRY. Now the legal department gave a rationale, apparently, of supposed probable cause for the intrusion into your computer. Is that correct?

Mr. PEDERSON. That's correct, Senator, although the rationale seems to change. Every time one gets shot down, they come up with a new one.

Senator KERRY. The original rationale for the intrusion was that you supposedly had done something—personal use or something. Is that correct?

Mr. PEDERSON. The original rationale was that a hard copy of an E-Mail I had written was found lying around on a printer. That E-Mail contained some critical comments, my personal opinion about then CEO Casey's representations to Congress about how quickly he could shut down RTC. Attached to that E-Mail and referenced on there was a copy of an article reporting that testimony by Mr. Casey.

As I was then told by Ms. Shangraw, she believed that this E-Mail, this hard copy, somehow raised issues of my loyalty or performance as an employee which then entitled her under this vague notion of managerial prerogative to suddenly copy each and every one of my WordPerfect files.

The simple answer would have been to just come to me and say, "Hey, I understand you wrote this, did you?" I would have said, "Yes, and if you would like a copy I'll print one out for you."

Ms. TAYLOR. I would like to add also that the E-Mail attached congressional testimony. The management of the RTC legal department, Ms. Shangraw, as well as others, fairly regularly send around that same kind of testimony attached to E-Mail and hard copy memos and things. And so, if it's not a personal use of RTC computers to inform employees of congressional testimony by the management of RTC, I don't understand how it's a personal use for Mr. Pederson. We were talking about RTC issues with RTC employees.

Mr. WAECHTER. And why is the assistant general counsel worried about personal files? That was the second excuse given, that he had personal files in his directory. That's my job. That's my job to clean up the network, not hers. She could tell me that there is per-

sonal files on the network and I could go ahead and verify that and pass it on to management. But it's not her responsibility. That's an outright lie. It's a way to go around people to make up an excuse to pinpoint them and try and remove them to just retaliate.

Senator KERRY. I think it's very obvious when you have people geographically relocated and all the other things your time line shows. There's not much mystery as to what was going on.

I think the saddest part of it is that the motivations were not somehow to prevent the RTC from doing what it's supposed to do. Your motivations, all of you, were to get the job done better. And what's so remarkable about this is that those who seemed to favor the inefficiency and incompetence and the waste have stood in your way.

This is not a management team that has set up a structure that is seeking constructive criticism or better ways of making this work. And that is so disturbing it's mind boggling.

The CHAIRMAN. Senator Kerry, if you will yield at that point, it's even worse than that. And I think Mr. Burnside has underscored this in sort of a different way. It's too purposeful to be just gross incompetence. It's just too purposeful and too focused.

The fact that cases were being tanked and investigative efforts were being stymied by professional liability attorneys who were really doing their work, that conveys an intent and a purpose that's very specific and very clear. We'd have to be fools not to see it. That, to me, is as disturbing—I mean, everything I've heard is disturbing. But that falls into a different category, because that has to do with essentially stealing money from the public or allowing somebody else to get away with it.

You know, just my own view is I have confidence and faith in this new President. I think if he were sitting here today, President Clinton, he would be as appalled as we are. No question. He would be as offended and outraged as the three of us are offended and outraged. So I have every confidence that he would feel as we feel in terms of not wanting to tolerate that and getting to the bottom of it.

So we want to take what you've given us. I'm in the middle of your comment, so I'll withhold—

Senator KERRY. No, no, no. All I wanted to add to that is, Mr. Chairman, that at the outset of this hearing I said that one of the problems is that I'm not sure that a lot of folks have the full view, at the higher level, of what has been happening over here. I am confident, obviously, that the President doesn't. I don't know whether the secretary does or not. I suspect also doesn't. But you told us today and have given life to what I said at the outset of this hearing that we wanted to understand, which is what really are the depths of the problem here.

Now, we've been receiving information here in Congress that we shouldn't extend the statute or there's no need for review because deadlines have been met, because sufficient reviews have been conducted. And so, indeed, Secretary Altman, the interim CEO of the RTC, can write a letter to Congressman Stark regarding his legislation to extend limitations and he says in it that the RTC has been increasing PLS staff to meet the demands of its workload. I see you smiling when you hear that.

The Secretary of the Treasury, in his capacity of the thrifts, has further committed to review and recommend improvements in the organization and the plan recently announced, et cetera, et cetera. Consequently, the RTC has no need at this time either to revisit "closed claims" arising from institutions in which the limitations period has expired, or to extend the limitations period prospectively, as the RTC will continue to meet all upcoming deadlines.

What you have said, Mr. Burnside, and others have said, is that is totally—that is a conclusion based on totally false input. Is that accurate?

I see all heads nodding.

In point of fact, the deadlines aren't really met, the information is not real, the reviews are not fully conducted, and the claims are closed when in fact they aren't sufficiently investigated. Therefore, we cannot trust the input to that judgment. Is that accurate?

Mr. PEDERSON. Senator Kerry, I agree. And if I could just add to demonstrate the spin control which this committee is experiencing. On March 30, 1993, Acting General Counsel, Richard T. Aboussie, testified over on the House side before the House Banking Subcommittee with RTC oversight. In the question and answer period which followed his statement, he made two interesting statements. One is that they are having terrible difficulties attracting and recruiting skilled, experienced PLS attorneys. Things have gotten so bad that they have been forced to go back to the FDIC and beg them for warm bodies which the FDIC promptly refused to do because they are busy enough, thank you very much. He then also went on to make a big point about how heavily used subpoenas are in the legal division's prosecution of professional liability cases.

How can he make those statements and Mr. Altman write that kind of letter? Someone is not coming clean.

Senator METZENBAUM. Isn't it a fact that Bill Roelle and Lamar Kelly who have been running the RTC since its inception are still in place and still running the RTC?

Mr. HENDERSON. That is correct.

Ms. TAYLOR. The management at the RTC, for the most extent, is the exact same management that was in place when Mr. Pederson and I came here a year-plus ago to tell you what would happen to the Professional Liability Section and tell you what had already happened in the reorganization. They're the very same people in place. The only difference is that we now have the Clinton administration with some Treasury oversight that has some people that he appointed. But the RTC itself is the same.

Senator METZENBAUM. Mr. Chairman, that's the reason for my outburst of dismay that the present administration has not taken hold of this agency. There is an acting head, Mr. Altman, but the fact is that Mr. Roelle and Mr. Kelly are still running it just the same way it was before and that's the reason these people have this continued sense of frustration.

Ms. TAYLOR. You can see that the problems at the RTC are rampant and widespread. I don't know. The Treasury officials have been good to Mr. Pederson and I in terms of meeting with us to hear some of our concerns and keeping a continuing dialog. But they are very few in number and the RTC has many, many problems and many, many locations. As a consequence, I think it has

been very difficult to get their arms around the bad behavior of management.

And, like this committee, they hear those same stories. Whether they're true or not, it's my opinion, that many of the stories that you hear and they hear are untrue when they come from the management of the RTC. The stories of the management of the RTC and how well they are behaving is similar to the investigations of the PLS.

Senator KERRY. Based on the GAO report alone, but coupled with the corroboration to the GAO report that has come not just from you but from many other quarters, I fail to understand why the same management is there. It is absolutely beyond my comprehension.

There is something in the American Government that when you waste a lot of money, you can get promoted or you can somehow stay forever. We do not hold people accountable.

The CHAIRMAN. Well, I think there is this great tendency to want to bury the mistakes in these unmarked graves and to keep it tidied up for as long as possible until the statute of limitations runs out or until the focus changes and we've got new issues and people are washed out or forced out or intimidated out and then it's forgotten and it's all behind us, I mean, that seems to me to be the pattern of what we are facing here. The notion that these cases should not be pursued. I mean, clearly I think they should be pursued. I think they have to be pursued.

Mr. Romer.

Mr. ROMER. The basic thing that I have observed in 3 years is all the information comes down to the worker level where I was. There is no way to put back up without getting it rewritten eight times before it gets to the top. So that information that you have down here never gets there, where the facts are, because each layer—and I think there's nine or ten layers to go through—each one rewrites it to his own. So the story—that's how come you've got this information that he's given the Congress, because it's been rewritten by every level of management.

The CHAIRMAN. We're going to conclude now.

With the testimony that you've given us, 2, 4, 6, 8, 10, 13 witnesses across this table from across the country, different backgrounds, all people with fine work records that have won awards at different levels of your professional career and development.

I think what you've given us today is very important and we obviously are very serious about it. This is not a hearing that has happened by accident. It happened by either your coming or our convening it and working with you to arrange for your testimony today.

We will continue to pursue these issues, individually and taken as a whole.

Senator Metzenbaum, Senator Kerry, and I will consult with one another and other Members of this committee as to the next steps that we want to take.

I want to again extend the invitation to every other person who's out there who has knowledge and information that we should have. That would be anything along the lines that you've given us today. That it's important that they bring that forward and give that to

us. They can do it either anonymously, if they're more comfortable with that, or if they want to give it to us directly and identify themselves with it, I would prefer to have it done that way. But I want to again ask that any information anybody has be provided to us so we can take and fill in more of this picture.

Senator KERRY. Mr. Chairman, before you sign off, let me just say to all of you, if there are any further instances of interference or retaliation of any kind, we would like you—expect you—to let this committee know.

I hope people will be on notice that there is a discussion here about whether or not some of those folks shouldn't be called in here to account for the measures they have taken thus far. And people should be on notice that this committee isn't going to tolerate interference with witnesses that come before the committee.

Second, I would like to just say the staff has worked hard on this. I would particularly like to single out Jonathan Winer of my staff who has spent an awful lot of time with all of you, who has put a lot of energy into helping to understand this issue. And I particularly appreciate him for his effort.

Thank you, Mr. Chairman.

The CHAIRMAN. I know you want to make one final comment.

Mr. KOSZOLA. I appreciate the time.

As far as retaliation, I tried to refinance my house about 6 weeks ago and the RTC and the FDIC have still refused, after several written requests and oral requests, to verify that I have been employed with them. That process normally takes a few days and you get a response back within a week. And they are interfering with me refinancing with a credit union where I already have an account to get a lower interest rate.

But the slander, like what these people have said, I have experienced that myself. All this is true, what they're saying.

The CHAIRMAN. Again, thank you all. This has been a very important hearing day. We will proceed accordingly based on what you've given us.

The committee stands in recess.

[Whereupon, at 2:35 p.m., the hearing was adjourned.]

[Prepared statements and additional material supplied for the record follow:]

STATEMENT OF SENATOR ALFONSE M. D'AMATO

Mr. Chairman, I would like to thank you for holding this important hearing today. I would like to also take this opportunity to welcome all our witnesses, including our colleague from the House, Representative Pat Schroeder.

Mr. Chairman, this Committee has engaged in a great deal of oversight of the Resolution Trust Corporation during the RTC's four years of operations. Few can argue that this attention was unwarranted, as the RTC has frequently made headlines due to perceived mismanagement and waste in its operations.

No one can claim that the task that the RTC inherited—cleaning-up the savings and loan crisis—is an easy one. The RTC inherited a massive, ongoing problem and had to “hit the ground running.” Nevertheless, the RTC is a trustee of the public. The RTC carries out vital work—ensuring that depositors in failed thrifts have their hard-earned savings returned. But we must never forget that the money spent resolving failed institutions is ultimately taxpayer's money.

Mr. Chairman, we can not allow waste, mismanagement or improprieties to continue, and we must uncover all evidence of waste and abuse. That is why it is important for us to have hearings like this one; such hearings raise issues that the RTC must address, and by addressing these issues, improve its operations.

The RTC operations have been the subject of much scrutiny. Testifying before this Committee last March, Treasury Secretary Bentsen outlined a 9-point plan for improving efficiency, and fighting waste at the RTC. The members of this Committee and this Chamber incorporated, and expanded upon, the Secretary's plan in the RTC funding legislation that the Senate passed last spring. Included in the legislation is expanded “whistleblower” protection.

Hopefully, the scrutiny received in hearings like this will help improve RTC operations through the remainder of the RTC's existence. I look forward to their testimony.

 TESTIMONY OF REPRESENTATIVE PATRICIA SCHROEDER

Mr. Chairman, thank you for holding these hearings and for allowing me to testify. I am honored to be here. I am especially honored because I am in the company of government employees like Jackie Taylor, Bruce Pederson and others, who risked their jobs in order to bring to light waste, fraud, and abuse at the Resolution Trust Corporation (RTC).

I would like to focus on the case of Bruce Pederson and Jackie Taylor. Their stories, and the stories of all of the other whistleblowers, raise serious concerns about how whistleblowers are treated. We need to better protect whistleblowers and we need to hold officials responsible for retaliating against employees.

Bruce and Jackie have raised legitimate questions about the reorganization of the Professional Liability Section (PLS) and have testified before this committee in the past. They have worked closely with my office and have cooperated with investigators from the General Accounting Office and the RTC Office of Inspector General.

Since first raising questions about RTC activities, Jackie and Bruce were demoted, isolated in a separate building, and threatened with transfers to Kansas City. And in the most recent example of what I consider to be retaliation, Bruce's computer was broken into and his files were copied.

Call me crazy, but breaking into a whistleblower's computer sounds a little like retaliation. It also compromises ongoing investigations with the General Accounting Office and the Office of Inspector General, as well as communications with Congressional offices.

That's why I asked the Department of Treasury to investigate the break-in. In August, Roger Altman, Interim CEO for the RTC, wrote to me that the investigation was complete and that, “RTC management did not retaliate against Pederson.”

Mr. Chairman, I am not satisfied with this conclusion and I hope you are not satisfied. I hope that the Committee will look into this further.

By the way, I have yet to see the IG report. Maybe you can help me get a copy. They can't seem to find one to send me.

I also wrote to Attorney General Janet Reno in May concerning the Justice Department's involvement in the decision to break into Mr. Pederson's computer. I am still waiting for a response from Justice.

Throughout this ordeal, it has been painfully apparent that there are insufficient protections for employees who work for the Resolution Trust Corporation and other government corporations.

We are currently working to reform the Federal Employees Whistleblower Protection law to include government corporation employees. It is little consolation for current whistleblowers, but it is a commitment that we can make for future employees.

The other commitment we can make to these employees and to taxpayers is to investigate allegations of waste and abuse.

I have been contacted by many whistleblowers who are concerned about questionable activities at the RTC. As a member of the Civil Service Committee, I have also received extensive materials from the RTC concerning contracts, personnel decisions, and fee bills. The Committee may want to look at some of this material. Some of the questions that whistleblowers have raised include:

- Allegations that former RTC employees are now working for law firms that receive million of dollars in contracts from the RTC.

- Allegations that certain preferred law firms have bilked the government and the taxpayer out of huge sums of money.

- Allegations that certain cases have been transferred away from regional RTC offices to the Washington office to protect firms that may have over billed the government.

- Allegations that former RTC employees who have received government contracts are being evaluated by employees they used to supervise.

Many of these allegations have been raised by employees who are concerned about waste and fraud.

There is a lot of talk about reinventing government. These people are on the front lines when it comes to reinventing government. It is our job to not let them down.

I thank the Chairman and the Committee for letting me testify today and offer any assistance I might give the Committee in the future.

TESTIMONY OF MICHAEL J. KOSZOLA

Mr. Chairman and Members:

My name is Michael J. Koszola, and I am pleased to have the opportunity to testify before you today. I have been a Federal enforcement officer for nearly ten years. I worked as a special agent and auditor for the U.S. Customs Service for five years investigating money laundering, commercial fraud, narcotics trafficking, copyright and trademark cases. Since December 1991, I have been employed as a special agent for the Office of Inspector General of the Resolution Trust Corporation (RTC/OIG). I am currently assigned with the Office of Investigation of the North Central Region in Kansas City, Missouri.

When I first joined the IG's office of the RTC, I viewed it as an opportunity to help uncover and prevent waste, fraud and abuse of the taxpayers' dollars in connection with the cleanup of the Nation's Savings & Loans institutions. Unfortunately, I found that the RTC/OIG is not doing its job, and that there is no incentive for the RTC/OIG to do the job. In fact, the RTC/IG spent more time covering up, or committing, fraud than it ever spent investigating it.

In today's testimony I will describe how the RTC/IG engaged in rewriting reports to avoid embarrassment, misleading Congress, covering up high level misconduct, shredding incriminating documents, and grossly distorting agency investigative priorities.

As a preliminary observation, I found that whistleblowers at the RTC who brought matters to the attention of the IG did not receive whistleblower protection. I was specifically instructed by my supervisors Daniel Sherry (Regional Inspector General for Investigations) and George Sullivan (Assistant Regional Inspector General) to avoid giving confidentiality to sources. The IG's office was unwilling to protect the identities of those who disclosed information concerning waste, fraud, and abuse, exposing the whistleblower to retaliation before an investigation could even take place. Time and time again, I heard of cases of retaliation.

I found cases in which agents at the RTC/OIG were instructed to rewrite reports they had written, to have them read a particular way that would be less likely to require further investigation. I saw facts taken out of particular reports. Investigative reports were altered in order to avoid potentially embarrassing or politically sensitive disclosures.

Once an IG agent writes up a report the process goes through about 6 people up to the Assistant Inspector General who signs off on the report. After producing a report, an agent, like myself, turns the report over to his supervisor, who turns it over to the Regional IG, who then submits the report to a desk officer at Headquarters who is a liaison with the Regional IG's Office. From the Headquarters desk

officer, a report is typically forwarded to the Deputy Assistant IG (Lew Sherman) and he turns it over for review to the Assistant IG (Clark Blight). From there a report goes to Counsel for the IG and finally to the IG, John Adair. If anyone along this chain of command doesn't like something in the report, it gets kicked back to the agent to change or is simply changed by someone else. The report is ultimately signed by the Regional Assistant IG and may not resemble the original report of investigation at all.

I was personally told by Clark Blight (Assistant Inspector General for Investigations) that it was the function of the Headquarters RTC/OIG to revise reports to outside agencies including the GAO and Senate and House Congressional Committees in order to make sure the RTC/OIG reports looked favorable to Congress. At that time, Blight was in the process of revising one such report to Congressman Gonzalez, Chairman of the House Banking Committee. Blight would highlight areas of reports that were already approved and request that the report be revised, rewritten, or changed to reflect a more favorable outcome. Another time top RTC/OIG officials were sent to the Denver regional IG's office in order to "assist" other RTC/OIG special agents in writing a report of investigation involving the Bush family.

The RTC/OIG attempted to mislead Congress in other ways as well. I saw case numbers falsely generated by the IG's office to make it appear as if we were doing more than we were doing. In fact, generation of "make-work" reports was a common practice in the RTC. Several special agents had a reputation for opening frivolous investigations in order to inflate the number of reports issued by their office.

I was personally assigned three cases that were previously closed to which new case numbers were assigned to create the impression before year end 1992 that the RTC was actively investigating every day. I was ordered by management to reinvestigate despite the fact that there was no new evidence to warrant reopening the investigations. We reinvestigated it for no reason other than to build up the numbers. We found nothing there the second time. This happened at least three times that I know of. I brought this to the attention of RTC/OIG management and was told that the RTC/OIG was trying to "keep Congress happy" in order to secure additional funding.

I found instances in which we at the IG's office were told not to tell the truth to the General Accounting Office. Indeed, I was specifically instructed by my supervisors at the IG's office (Daniel Sherry and George Sullivan) not to provide any negative information about the RTC to GAO in 1992. I was told not to provide information to the GAO concerning RTC employees who had criminal histories. I was further instructed not to say anything about thefts in the buildings. The IG did not want to open a case on the thefts and they did not want the GAO doing so, either.

In June 1992, teleconferencing equipment valued at over \$50,000 was stolen from the RTC Chicago office. The equipment was "secured" in a RTC office that required a key. The equipment was allegedly stolen by RTC employees and/or RTC contractors. The Regional Inspector General for Investigations, Daniel Sherry, did not want to document the theft in RTC/IG records. Eventually, at the request of my supervisor, George Sullivan, Sherry allowed the theft to be documented. Mr. Sullivan said he had to beg Mr. Sherry to open a file on the theft of equipment, because I was told the RTC/OIG needed to show that they were active in investigating and needed statistics.

The RTC/OIG did not actively investigate the theft and delegated the investigation to the local police department. As far as I know, the theft investigation was not solved by the local police department or the RTC/OIG.

Thefts of RTC computer equipment were common in every RTC office. There were no internal controls or investigation systems in place to prevent the theft of RTC property from RTC offices by RTC employees or contractors. The thefts and the total value of the loss can not be exactly determined, but it was estimated to be over \$1,000,000 nationwide.

I made an oral and written presentation to Mr. Sherry and Mr. Sullivan to implement a couple of internal controls to deter the thefts. Both Mr. Sherry and Mr. Sullivan told me that it was not the function of the RTC/OIG to prevent the thefts. When I presented the same internal controls ideas to Clark Blight, Assistant Inspector General, and Lew Sherman, Deputy Assistant Inspector General, they said that it was a good idea and that internal controls should be developed. To my knowledge no internal controls were ever implemented as I continued to receive information from other RTC/OIG special agents that thefts of computer equipment were still occurring on a regular basis.

I learned of the politicization of investigations, when management would send agents to look over the shoulders of other agents when they were reviewing S&L matters that might pertain to political figures. Before the Presidential election in 1992, the RTC/OIG was actively seeking criminal or other negative information from

RTC/OIG special agents on the Clinton family. After the election, Clark Blight travelled to other RTC offices and stated that after Inspector General John Adair openly criticized Albert Casey, CEO of the RTC, before Congress, that Adair was going to be easily nominated as the next FDIC IG. Adair was expected to take over the FDIC/OIG after the RTC/OIG and FDIC/OIG merged.

Sometime in mid-February, 1993, an anonymous male telephone caller stated that Patricia Patterson was buying RTC properties in Dallas as a straw purchaser for Albert Casey, the Chairman of the RTC. Ms. Patterson was allegedly Mr. Casey's girlfriend. The caller stated that the properties were being purchased from a property development called The Blue Bonnet. The caller was not sure of the name of the savings and loan that was associated with the property.

The caller stated that he was an employee of the RTC and had reported this information to the RTC/OIG in Dallas, Texas. The caller stated that to his knowledge no investigation was initiated by the RTC/OIG because no auditors or special agents reviewed records or made inquiries of the property sales department. The caller stated that he intended to call all the RTC/OIG offices to notify them of these allegations.

I sent my supervisor, Mr. George Sullivan, a memo regarding this information. To my knowledge no investigation was ever initiated.

In order to minimize embarrassments to the agency, management sometimes simply declines to investigate. For example, after one of RTC's contractors pled guilty for theft of RTC properties, I worked up the financial data on other areas of possible theft of taxpayer assets by this company and asked the Regional IG to do an audit. Despite the clear potential for additional recoveries, Regional refused to do the audit. I never asked them for another audit.

Last year I received information that Albert Casey, the former Chairman of the RTC, was involved in obtaining a million dollar plus contract for a company in which he had a personal and possibly financial interest. The name of the company is First Gilbraltor Realty Advisors located in Dallas and Irving, Texas and the contract involved the asset management of Trans Ohio S&L, a failed thrift.

The services of First Gilbraltor were not needed and the RTC officials at Trans Ohio and in the Chicago Consolidated Office objected to the contract and refused to approve the contract. RTC headquarters signed the contract rather than the RTC officials in Ohio and Chicago and charged the contract out of the DC budget. The services which were provided by First Gilbraltor were either not performed or were performed in a poor manner. The RTC was billed approximately \$1 million under this contract. I reported this information to my supervisor, George Sullivan, who was not interested in pursuing the matter.

Another investigation I tried to initiate involved reports of over billing and sleeping on the job by employees of another RTC contractor, Coopers & Lybrand. I saw Coopers & Lybrand accountants, hired by the RTC, perform little or no work at exorbitant costs. I saw accountants sitting and reading non-government literature and being paid for it by the RTC. When I investigated this, I was told that their contract permitted them to sit there and read when there was no work to do. It was an obvious rip-off. When I tried to do something about it, I was told by my supervisor, George Sullivan, not to bother with it, that it was too embarrassing to merit investigation. The RTC employee who approved the payments to Coopers & Lybrand is now employed by them.

I regularly saw bills being paid by RTC without any documentation verifying that services had been performed. For example, RTC would pay very large legal services bills every month without any backup. It was like found money for any law firm lucky enough to get that kind of contract.

In one case, I investigated a situation where the RTC was paying \$10,000 a month and other RTC officials blocked every attempt I made to investigate. After receiving information concerning false billing by the law firm, Barrack, Ferrazzano, Kirshbaum & Perlman, I attempted to obtain relevant records from the RTC Professional Liability Section (PLS) in Kansas City. The RTC/PLS repeatedly denied the RTC/OIG access to the records. Previously, PLS denied access to the records over a year long period to other RTC employees. After months of being stonewalled, I finally obtained a grand jury subpoena to get the documents. The RTC/OIG attempted to stop the subpoena from being served because it was too embarrassing to subpoena the RTC/PLS according to RTC/OIG managers.

At the same time that the RTC/IG was ignoring major fraud cases, the IG's office was vigorously investigating an employee who was recycling RTC trash and using the money he received to buy coffee and doughnuts for other RTC employees. I saw an IG's office that would insist that agents pursue small amounts of losses, like time and attendance cases of RTC employees. It was safer to investigate penny ante matters and to find a lower-level worker whom you could show was a few hours off on

his hours than to respond to the much more significant cases of waste, fraud, abuse and wrongdoing involving millions of dollars.

An incident which epitomized for me the blatant disregard for the law in the IG's office occurred on August 24, 1992. I was on detail in D.C. shortly after Gerald Jacobs, General Counsel of the RTC, had resigned under a cloud of allegations concerning personal and official impropriety despite the fact an Inspector General's report said that it had found "no information" showing any impropriety with respect to Jacobs' dealings with a failed Arizona S&L. I was working at the IG Headquarters in Rosslyn, VA, when I overheard Lew Sherman, Deputy Assistant Inspector General for Investigations and Clark Blight, the Assistant Inspector General for Investigation, laughing and making jokes about how they'd "taken care of the Jacobs' case" by shredding documents all weekend with the help of several other special agents. They joked about how they had needed to borrow a shredder from another office to handle all the shredding. The borrowed shredder was in the office in which I was working and though I did not witness the actual shredding—I saw them remove the borrowed shredder to return it to the other office. Shredding documents following the conclusion of an investigation is not unusual. However the circumstances of this shredding operation raises a number of questions. What was the hurry? Why did it occur over a weekend? Why did it take an entire weekend for two assistant IG's and three special agents, with two shredders, to carry out a routine shredding? (The three special agents received "letters of exemplary service" for their "expedient response" and "professionalism" in conducting the Jacobs' investigation.)

On April 19, 1993, I was placed on indefinite administrative leave pending an investigation into allegations of which I have still not been officially informed. On April 5, 1993, two weeks before I was placed on administrative leave, I was ordered by my Supervisor, George Sullivan, to discontinue any contact with the Senate Banking Committee.

Since being placed on leave I have received at least ten threatening phone calls. I alerted the police after each call and was able to tape one of the calls which consisted of nothing but the sound of machine gun fire. On another call, the caller stated something to the effect of "we're gonna get you." A number of callers repeated obscenities over the phone.

For the past several months, I have not been permitted to work at all by the RTC. The taxpayers are still paying my salary. I am ordered to come to work each Wednesday morning and then ordered to go home as soon as I arrive.

I have worked for a number of Federal agencies but never in my career have I seen an agency managed so poorly and with such profound consequences for waste, fraud, and abuse, as the RTC. I have been asked sometimes how much taxpayer money the RTC has wasted. I cannot tell you. I have only seen a tiny corner of the RTC's operations. But based on what I have seen, I can only conclude that the total must be in the billions.

Exh. 1

**OFFICE OF
INSPECTOR
GENERAL**

**RESOLUTION TRUST
CORPORATION***Office of Investigation*

DATE: August 31, 1992

TO: Pat Wagner, Special Agent

FROM: Clark W. Blight, Assistant Inspector General
for
Investigation

SUBJECT: Exemplary Service

I want to commend you on your professionalism in conducting the Jacobs investigation. Your expedient response to our request for assistance is greatly appreciated. The commitment of support you displayed, helped to complete the investigation in a timely manner.

Pat, we look forward to your continued success with the RTC/OIG.

To: B:\NIELSEN.LTR

WP5.1

Revised: 00-20-72 04:31p

DATE: August 31, 1972

By: Eric R. Nielsen, Special Agent

COM: Clark W. Dlight, Assistant Inspector General for
Investigation

SUBJECT: Exemplary Service

want to commend you on your professionalism in conducting the Jacobs investigation. Your expedient response to our request for assistance is greatly appreciated. The commitment of support you displayed, helped to complete the investigation in a timely manner.

ick, we look forward to your continued success with the RTC/OIG.

oks: 1 Next Doc: 2 Prev Doc: 0

To: B:\HARTSELL.LTR

WP5.1

Revised: 00-20 72 04:30p

DATE: August 31, 1972

By: Mack Hartwell, Special Agent

COM: Clark W. Dlight, Assistant Inspector General for
Investigation

SUBJECT: Exemplary Service

want to commend you on your professionalism in conducting the Jacobs investigation. Your expedient response to our request for assistance is greatly appreciated. The commitment of support you displayed, helped to complete the investigation in a timely manner.

ick, we look forward to your continued success with the RTC/OIG.

oks: 1 Next Doc: 2 Prev Doc: 0

Exh. 2

**OFFICE OF
INSPECTOR
GENERAL**

**RESOLUTION TRUST
CORPORATION**

Office of Investigation ■ North Central Region

DATE: January 19, 1993

MEMORANDUM TO: George F. Sullivan
Asst. Regional Inspector General for Investigation

FROM: Michael J. Koszola
Special Agent

SUBJECT: Coopers and Lybrand

Bob Contractor, RTC facilities employee, alleged that Coopers and Lybrand is currently employing sub-contractors who are allowed to "sit and read" while being employed by the RTC (see attached email message). Contractor is concerned that the Coopers employees are falsely billing the RTC for services not performed.

Should we open a complaint on this information?

**OFFICE OF
INSPECTOR
GENERAL**

**RESOLUTION TRUST
CORPORATION**

Office of Investigation ■ North Central Region

DATE: January 21, 1993

MEMORANDUM TO: George F. Sullivan
Asst. Regional Inspector General for Investigation

FROM: Michael J. Koszola
Special Agent

SUBJECT: Coopers and Lybrand

Bob Contractor, RTC facilities employee, alleged that Coopers and Lybrand is currently employing sub-contractors who are allowed to "sit and read" while being employed by the RTC. Contractor is concerned that the Coopers employees are falsely billing the RTC for services not performed.

I discussed with Coopers and Lybrand managers whether there was an agreement between the RTC and Coopers and Lybrand allowing RTC contractors, specifically Coopers and Lybrand employees or sub-contractors to "sit and read" while being compensated by the RTC. I discussed the "sit and read agreement" issue with Coopers and Lybrand managers Wesley Kee, Percy Berger, and partner-in-charge Sheree Speakman. Wesley Kee stated that a "sit and read" agreement does not exist between the RTC and Coopers and Lybrand. Mr. Kee stated that approximately 80 sub-contractors were terminated recently because there was a lack of work to perform at the RTC. Mr. Kee stated that Coopers and Lybrand employs approximately 30 employees and approximately 130 sub-contractors. Mr. Percy Berger stated that the agreement to "sit and read" was an agreement between Coopers and Lybrand officials only, which he established.

Bob Contractor stated that a former Coopers and Lybrand employee, James Kennedy, was discharged by Coopers and Lybrand in December 16, 1992, after Kennedy made racial slurs to Bob Contractor.

Exh. 4

**OFFICE OF
INSPECTOR
GENERAL**

**RESOLUTION TRUST
CORPORATION**

Office of Investigation - North Central Region

DATE: February 16, 1993

MEMORANDUM TO: George F. Sullivan
Asst. Regional Inspector General for Investigation

FROM: Michael J. Koszola
Special Agent

SUBJECT: Patricia Patterson

An anonymous telephone caller (male voice) stated that Patricia Patterson is allegedly buying RTC properties in Dallas, Texas as a straw purchaser for Albert Casey, the Chairman of the Resolution Trust Corporation. Patterson is allegedly the girlfriend of Casey.

The caller stated that the properties are being purchased from a property development called The Blue Bonnet. The caller was not sure of the name of the savings and loan that is associated with the property.

The caller stated that he is an employee of the RTC and has reported this information to the RTC\OIG in Dallas, Texas. The caller stated that to his knowledge no investigation was initiated by the RTC\OIG because no auditors or special agents reviewed records or made inquiries of the property sales department. The caller stated that he was calling all of the RTC\OIG offices to notify them of the straw purchasers.

Should we open a complaint on this allegation? Should we make a referral on this allegation to headquarters?

To: Marcella A. English@ig@RTCKCMID
 Cc:
 Bcc:
 From: Michael J. Koszola@IG@RTCKCCHI
 Subject: acts check request
 Date: Wednesday, February 17, 1993 9:35:49 CST
 Attach:
 Certify: Y
 Forwarded by:

EXH. 5

 please check ACTS for the following names:

PATRICIA PATTERSON	DALLAS, TEXAS
PATRICIA PATERSEN	" "
PATRICIA PATTERSEN	" "
PATRICIA PETTERSON	" "

PLEASE CHECK THE FOLLOWING NAME, IT IS AFFILIATED WITH A PROPERTY DEVELOPMENT
 AND OR A SAVINGS AND LOAN:

THE BLUE BONNET LOCATED IN DALLAS, TEXAS
 THANKS
 MIKE

To: Michael J. Koszola@IG@RTCKCCHI
 Cc:
 Bcc:
 From: Marcella A. English@ig@RTCKCMID
 Subject:
 Date: Wednesday, February 17, 1993 10:01:57 CST
 Attach:
 Certify: N
 Forwarded by:

EXH. 6

 Hello.

I have checked for ACTS information on your requested names. I have found the following:

PATRICIA PATTERSON	DALLAS, TEXAS	WA-00-0133/WA-92-0012
PATRICIA PATERSEN	NOTHING	
PATRICIA PATTERSEN	NOTHING	
PATRICIA PETTERSON	NOTHING	
THE BLUE BONNET	NOTHING	

Exh. 7

**OFFICE OF
INSPECTOR
GENERAL**

**RESOLUTION TRUST
CORPORATION**

Office of Investigation ■ North Central Region

DATE: March 2, 1993

MEMORANDUM TO: George F. Sullivan
Asst. Regional Inspector General for Investigation

FROM: Michael J. Koszola
Special Agent

SUBJECT: Professional Liability Section

I made several requests to Julie Yanda, Resolution Trust Corporation (RTC), Section Chief, Professional Liability Section (PLS), for records of RTC contractors performing legal services for the RTC. Yanda stated that she would obtain the records but stated that she had other duties besides obtaining records for the RTC\OIG.

I made a request to the RTC Chicago Consolidated Office for copies of records of RTC contractors performing legal services for the RTC. Caryn Rodenck, litigation support, Chicago Consolidated Office, was told by Yanda not to provide records to the RTC\OIG but to send the records to PLS in Kansas City.

I have been informed that there have been previous requests for records from the PLS by the RTC\CCO Investigations Department. The requests made by the RTC\CCO Investigations Department were denied. Some of the requests were for the same records that I requested.

A grand jury subpoena was issued to Julie Yanda to obtain the records. Deputy PLS Chief B.J. Hickert received the subpoena on February 24, 1993.

Exh. 8

To: Marisha A. Price@CONTREG@RTCDC
 Cc:
 Bcc:
 From: Michael J. Kozola@IG@RTCKCCHI
 Subject: request for glibrator invoices
 Date: Tuesday, March 2, 1993 10:21:56 CST
 Attach:
 Certify: Y
 Forwarded by:

 Please provide copies of all paid and unpaid invoices regarding a contract with RTC contractor FIRST GIBRALTAR REALITY ADVISORS, INC., located in Texas at RTC institution TRANS OHIO, Cleveland, Ohio.

Please send a copy of the contract and the list of GIBRALTAR employees and any other documents submitted by GIBRALTAR.

thanks
 mike

First Gibraltar Realty Advisors
 A wholly owned subsidiary of First Gibraltar Bank, F.A.B.

September 30, 1992

Angela Ditzel
 Administration Officer
 Resolution Trust Corporation
 National Sales Center
 801 17th Street, NW, Room 233
 Washington, DC 20434

EXH. 9

RE: Transohio Oversight Project Contract # 700-91-0037-02
 Task Order 021

Dear Angela:

Attached please find an invoice related to the Transohio Oversight Project for services rendered August 30, 1992 to September 26, 1992.

Upon your review, please forward this billing to the appropriate persons for payment. Should you have any questions or comments please contact me;

First Gibraltar Realty Advisors, Inc.

Unaffiliated subsidiary of First Gibraltar Bank, FHL

Resolution Trust Corporation
National Sales Center

Invoice Number: LHC#208-100

ATTN: Angela Ditzel
RE: Transohio Oversight Project

CONTRACT # 700-91-0037-02
Task Order 021

	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
Senior Managers	234.00	\$190.00	\$ 44,460.00
Senior Professional	832.25	\$100.00	\$ 83,225.00
Junior Professional	755.25	\$ 60.00	\$ 45,315.00
Paraprofessional	431.00	\$ 30.00	\$ 12,930.00
Clerical	56.25	\$ 20.00	\$ 1,125.00
Travel Expenses			<u>\$ 41,647.48</u>
Balance due			<u>\$228,702.48</u>

Approved: _____

Remit Payment to:

First Gibraltar Realty Advisors, Inc.
Attn: Cindy Poynter
1925 W. John Carpenter Freeway
Irving, Tx 75063-3224

Exh. 1C

**OFFICE OF
INSPECTOR
GENERAL**

**RESOLUTION TRUST
CORPORATION****Office of Investigation • North Central Region**

DATE: March 15, 1993

MEMORANDUM TO: George F. Sullivan
Asst. Regional Inspector General for Investigation

FROM: Michael J. Koszola
Special Agent

SUBJECT: REMOVAL AND SEARCHING OF RECORDS

Per our conversation on Friday, March 12, 1993, I am requesting that you inform me when you search my office and remove records without my knowledge.

I was not able to locate records which you took from my office without telling me. You did not explain why you took the records. I asked you several times whether you took the (Frazier) records. You responded that did not take any records from my office. After an hour had passed since I originally asked you about the missing records, you finally admitted that you removed files from my office during the past week. You stated that you were amiss and returned the Frazier records.

You admitted that you removed records pertaining to (KC-93-0016) without my knowledge. I previously reported that records were missing from this file. Please check your records and office to determine whether there are other records you have removed from my office without telling me.

Exh. 11

**OFFICE OF
INSPECTOR
GENERAL**

**RESOLUTION TRUST
CORPORATION**

Office of Investigation ■ North Central Region

CONFIDENTIAL

DATE: April 8, 1993

MEMORANDUM TO: Senator John Kerry and Jonathan Winer

FROM: Michael J. Koszola
Special Agent

SUBJECT: RTC Office of Inspector General

I was given a direct order by my Supervisor George Sullivan on Monday, April 5, 1993 instructing me not to call your office and not to have any contact with your office. I was also ordered not to give my office telephone number to anyone. Sullivan stated that the Regional Inspector General, Daniel Sherry instructed him to prohibit me from using the government phone for government business. I was ordered to give the office secretary telephone number to callers. The secretary does not have the capability to transfer telephone calls to my telephone.

My immediate supervisor, George Sullivan, told me that the RTC\OIG has obtained a copy of all my office telephone calls that were made from and to my old telephone number, 708.290.7746. Sullivan stated that I should not be cooperating with your office.

I was told and believed that my communication with your office would be confidential. I do not like being harassed by my supervisors for communicating with your office regarding RTC matters. Also, I am not allowed to meet with the U.S. Attorney regarding investigative matters.

As I previously reported to your office, the RTC\OIG does not pursue investigations of fraud, waste and abuse involving the RTC. The RTC has repeatedly hired contractors who had criminal histories and were convicted felons. The RTC\OIG has investigated me ever since I objected to their unethical and possibly illegal actions. If you have any questions and/or want information of wrongdoing at the RTC\OIG, please contact me at my new office telephone number 708.427.9278. Please do release my identity to RTC officials.

Exh. 12

**OFFICE OF
INSPECTOR
GENERAL**

**RESOLUTION TRUST
CORPORATION****Office of Investigation ■ North Central Region**

DATE: April 19, 1993

MEMORANDUM TO: Michael J. Koszola
Special Agent

From: George Sullivan *GJS*
Assistant Regional Inspector General
for Investigation

SUBJECT: Placement in Non-Duty, Paid Status

This is notice that, effective immediately, I am placing you on administrative paid leave. As you know, an investigation has been initiated which concerns various allegations made against you. Placement on administrative paid leave status will continue until further notice or until the investigation is completed and a decision is made regarding your continued employment with RTC OIG. In order for this office to keep you advised of your status, you may want to notify us if you plan to be away for any extended period of time.

Pursuant to this notice, you must immediately provide me with your credit cards (Diners Club and telephone), building access keys, and OIG credentials.

cc:
Daniel L. Sherry
Clark W. Blight

OPENING STATEMENT OF THOMAS O'BRYON

Good Morning Senators:

In the early 1980's, I worked with many S&L's in the Pacific Northwest, as well as in California as a consultant helping to resolve non-earning asset problems. The largest of these institutions was State Savings of California, which eventually was taken over by the Bass brothers and became American Savings as the "Good Bank" and New West Bank as the "Bad Bank."

In 1990, I applied to work with the RTC in the Costa Mesa, California office and was accepted in June of that year. I worked for the RTC for just over a year before I became completely fed up and decided that I could not do much that could be considered constructive. I felt that maybe, do to my employment with the RTC, I could help individuals and companies that were interested in doing business with the RTC. That work continued until November of 1992 when again my frustration level grew to such a point I decided I was completely wasting my time and my clients money.

I was a guest speaker at the National Home Builders Association Annual Conference in Nevada in 1992. My co-speaker at that Conference was Mr. Rick Wolfe, who at that time was head of Asset Sales in the Denver Sales Office of the RTC. I also was a guest speaker at the California Building Industry Economic Forecast Conference in San Francisco, in 1992. At both of these conferences my topic of discussion was "How to do business with the RTC."

I hope that this shows you that I have not been a stranger to the RTC since my resignation. Now, on with some of my thoughts about the RTC.

MANAGEMENT

The style of management at the RTC during my tenure and subsequent association through my clients, was one of crisis management.

I have been a manager of a number of my own companies, and I like to think that I have learned a little something about what could be considered appropriate behavior on the part of a superior. During the time I was working for, and doing business with the RTC, I witnessed and was subjected to fits of rage, rudeness, yelling, sexual innuendo and generally demeaning and harassing behavior on the part of more than one member of the senior staff of the RTC. I saw individuals threatened with firing, as was I on more than one occasion. I saw senior staff saying that they would put an end to peoples careers. These are fear tactics, and were rampant throughout the RTC in the areas that I worked. It was quite common for employees to gather and talk about the threats that they received, or of the sexual advancements by superiors.

REPORTING/FRAUD

From time to time, the RTC in Washington, or at the regional office, would request information on RTC's real estate portfolios. The information was nearly impossible to gather due to lack of adequate time and a clear definition of what the material needed to include or what the material would in fact be used for. This created a tremendous amount of waste, as individuals would have to stop what they were doing and rush to get the data that was demanded. As a result of not having enough time to produce the reports properly, I was repeatedly asked to misrepresent the numbers in my reports that were to be delivered to Washington.

On one occasion, I was told that I had to complete a report in one day that needed at least five days to complete. I was given only one day because we had just received the request from Washington even though the request had been ordered two weeks before. As a result, I would not send the report with my name attached, because I knew the information in the report was inaccurate and incomplete. When I resisted sending the inaccurate report in, my superiors told me I was not doing my job and if I did not cooperate, I would be fired.

My attitude was, that if I didn't get fired for producing the documents without my name on them, I would get fired for turning in fraudulent information. Needless to say, this is a very compromising situation. It was, however, not uncommon.

As you can see this speaks to both management and fraud.

REOIS/REOMS

The REOIS, or Real Estate Owned Inventory System, was the primary method of reporting and tracking of real estate assets at the RTC until 1991 when REOMS (Real Estate Owned Management System) was introduced. I was given the job of management and implementation of the system.

The system was flawed from the beginning. Too many people with too many ideas of what they thought the system should or could do were involved in the design. This created a system that would not work, because it had inadequate controls. To correctly implement the controls that were necessary, Bill Sutton, of the Denver RTC office, and I went to Washington to assist the programmers with the system and met with Lamar Kelly and Mr. Cook, his assistant. The purpose of the trip was to discuss simplifying the system and establishing controls to insure data integrity.

As the REOIS system was a precursor or temporary system until REOMS could be set up, we felt that we could also help in the design and controls of REOMS. We were not consulted, and as a result the REOMS system will eventually cost the American Taxpayer \$100 Million Dollars. This number could have been far less, but the decision was made without full consideration of the ramifications and long term impact. It was that RFP that was ill-conceived and caused the problem.

Again, this goes to waste and mismanagement.

INAPPROPRIATE BEHAVIOR

I am currently a witness for the government in a case that involves: Inappropriate Behavior of a Sexual Nature, Abuse of Position by Attempting to Inappropriately Influence Subordinate Level Employees, Abuse of Position by Inappropriately Accessing Files and Abuse of Position by Attempting to Harm other Employees' Careers.

I don't think it would be appropriate for me to discuss this matter with you in any specifics at this time. I would be willing to give some general types of information if you think that would be alright.

I can honestly say, however, that I have seen and heard about these types of abuse in more than one of the offices of the RTC.

WASTE

After I was asked to turn over REOIS to a new employee, I was given six apartment buildings to manage in Phoenix, Arizona. At that time, the individual that was managing them was being promoted to Department Head and was no longer able to manage these assets.

When I did my review of the apartments, I noticed that the rents had been drastically changed by the previous asset manager. This had created a tremendous vacancy and the RTC was losing a significant value due to the decline in rents, not to mention the reduced cash-flow. As I further investigated the properties, I discovered that the six properties combined had approximately \$1,400,000.00 (One Million Four Hundred Thousand Dollars) sitting in checking accounts earning *NO INTEREST*. The funds had been in the account earning no interest for nine months.

Under FIRREA, RTC's authorizing legislation, RTC is supposed to earn interest on all of its funds. Due to incompetence on the part of the manager, the taxpayers lost all of that interest.

When I questioned the person who placed the funds in the non-interest account about his decision, the person, who was now my boss, replied that placing the funds in an interest-bearing account would have required too much paperwork. The interest that could have been earned could have paid a lot of salaries. This also illustrates managements ability and style.

This is just one of several situations that I ran across on a regular basis.

IG'S OFFICE

I have filed two complaints with the IG's office. The first was to report waste as in the example above, and the second was to report that a current employee was buying real estate from the RTC and hiding this illegal activity by using front men who are not connected with the RTC.

On the first complaint, I have no idea as to the outcome except that the person I turned in has been promoted at least one more time. As to the second complaint, which was filed in May of 1993, I also have no idea of its outcome.

AUCTION/SALES

One of the tasks that I performed for my clients after leaving the RTC was to help them buy assets. The average real estate purchase takes between four and five times as long from the RTC as it does from the private sector.

Buying assets from the RTC almost always became a personality contest. Except for the auctions, it was a question of how much time you were willing to spend with the asset specialist handling the asset. In part this is due to the amount of paper

work that an asset specialist has to do to justify his or her accepting an offer. If I, as the representative for a buyer, was willing to do some of the work for the asset specialist, then I was a hero to him. He would then go out of his way to help me secure the asset. This did not always help however; on several occasions the asset would be pulled and then put into an auction even though a good offer was pending.

Action such as this cost the taxpayers millions of dollars, and I am not referring just to the lost revenue on the sale, but as a result of the exorbitant costs of the auction. I have also witnessed the auctions doing a tremendous damage to an entire market areas due to the substantially reduced prices that some auctions have produced. San Diego, California is a prime example of this. It may take years for the effects to be mitigated.

Another example is Colorado Springs; Colorado. At one point in time the RTC held as much as 43 percent of the commercial real estate in the downtown area. An auction was held and the properties were sold at a time when the market was severely depressed. Since then, Colorado has turned around and now has the strongest real estate market in the country. It has only been two years. The RTC managed to sell these properties at the very bottom of the market netting approximately 40 percent or less of what they would bring today.

One specific example was the purchase of a 125,000 square foot R&D Warehouse building in Colorado Spring in 1991 for \$12.50 per square foot. Within one year the purchaser syndicated the building to an investment group for \$50.00 per square foot. The RTC left \$4,687,500.00 (Four Million Six Hundred Eighty Seven Thousand Five Hundred Dollars) on the table because of RTC's managers orders to sell property as fast as they can regardless of price.

This policy of "speed at any cost" has cost the taxpayer *BILLIONS*.

It is easy to criticize. It is much more difficult to produce creative workable solutions. I am here today to discuss these problems as well as workable solutions.

I will be happy to answer any questions that you may wish to ask.

STATEMENT OF JAMES ROMER

SEPTEMBER 23, 1993

Mr. Chairman and Members of the committee:

It is an honor and a privilege to address this committee regarding contracting irregularities, management improprieties, contractor collusion and conflicts of interest at the Dallas Office of RTC during the early years of its existence. The testimony I am about to give is based on first-hand knowledge and reflects my personal experiences while employed as a Contract Specialist in the Dallas Metroplex Consolidated Office of RTC.

BACKGROUND

Prior to working for the RTC, I had over 30 years experience in the areas of Real Estate Brokerage, Appraisals, Construction, Business Development and Computer Applications. I have owned several businesses and have directly supervised up to 80 employees.

I began employment at RTC in February 1990, approximately four months after the Dallas Office opened. My first assignment at RTC was to organize and staff a contractor registration department for the South West Regional Office which was also headquartered in Dallas.

I established an organization of six people, developed registration procedures, designed a computerized data base and supervised the registration of the first 12,000 contractors. My team also completed the solicitation and award of 75 contracts. As a result of this effort I received the first Gold Star Achievement Award granted in the South West Region.

However, all was not well at the co-located Dallas Metroplex Consolidated Office; especially in the contracting department. Besides the normal organizational start up pains of new people learning to work together, obtaining office space and developing operating procedures, there were fundamental philosophical problems that seriously affected contracting. These were reflected in the basic organizational structure: the general hiring guidelines and the loose operating practices.

First, contracting was not and could not operate objectively since it was organizationally reporting directly to and was fully responsible to the Asset Management Department whose mission was to dispose of assets. The contracting managers were essentially told what to do and who to contract with. Contracting was little more than the conveyors of paper that documented and validated decisions that asset

management had already made. For most of 1990 and 1991 the concept of fair and open competition was a joke.

This was especially true for minority contractors since most asset managers were predisposed to conclude that minority contractors were not capable of performing asset related work. Even though FIRREA had dictated the "maximum use criteria" senior management in Dallas would not permit contractor registration reports to reflect minority identification even though I had designed the data base to do so.

Second, the general hiring policy at the time was that anyone that had a FAR (Federal Acquisition Regulation) background was not suitable for consideration to be hired in the contracting department. The reasoning was that since RTC was not required to operate under the FAR rules it would be counter productive to have people around with that kind of discipline. People with FADA (Federal Asset Disposition Agency) or banking backgrounds, the good buddies, many who were involved in the creating the Savings and Loan crises, were hired with abandon. Even applying the FAR contracting principles, without the actual regulations, was considered sacrilegious.

The first and second tier contract managers had minimal contracting background and as such did not understand the need for applying the fundamental principles of good contracting such as, limiting RTC liability, finite contracting periods, well defined statements of work, cost realism, negotiation techniques and post award contract administration.

Third, the contracting operating environment was purely one driven by time pressures and deadlines dictated by the senior asset managers. Contract specialists were fearful of losing their jobs if a contract, especially a SAMDA, was not awarded by the designated date set by asset management. No matter if there were loopholes that permitted the contractor to operate with little or no controls.

THE PILLAR INCIDENT

My first insight into the buddy arrangement for awarding contracts came in October 1990. During that month Solicitations 761-9966-900139, 140, 141, 142, 143 & 144 were issued to secure contractors to perform computer identical corrections to assets at six locations. I was the contract specialists assigned to work the solicitations.

One firm was the lowest bidder and the best qualified on all six of the solicitations. I performed the required verifications and recommended to the Asset Department that the contracts be awarded to the low bidder. Assets rejected the recommendation and requested that four of the contracts be awarded to the lowest bidder and two contracts be awarded to the second ranked bidder whose chairman was friends with several of the senior staff at RTC.

In reviewing and checking on the required certifications pursuant to FIRREA and 12 CFR 1606, there were obvious conflicts with the seconds ranked bidder. This was brought to the attention of the Dallas Deputy Ethics Officer on November 19, 1990 (Attachment 1) after preliminary checks revealed inconsistencies between the firm's proposal and the facts. The Chairman and Chief Executive Officer of the second ranked firm was currently employed as a Sr. Vice President at a Savings and Loan and had not disclosed this employment.

During my inquiry into the information on the second ranked firm's certification forms I physically went to the Savings & Loan office and obtained a letter from the personnel department confirming the employment of the Sr. Vice President and also obtained a copy of the institution's financial statement which listed the bidder's Chairman as a Sr. Vice President. These were obvious conflicts.

Later at my RTC office, I was confronted by my Department Head and admonished for physically going to the bidders office to verify this questionable information. When I informed the Department Head of my findings and the need to inform the Ethics Department, he advised me that there was no need to check out the firm because it had already been decided that they would soon be awarded a major SAMDA contract for the management and disposition of assets.

Finally, in response to my protests and refusal to award my two contracts to the second ranked firm, I was given permission to award all six contracts to the lowest bidder. However, the senior management of the Dallas Metroplex Consolidated Office had dictated that the second ranked firm be awarded business.

A major SAMDA contract was awarded to this firm in spite of independent reports from the investigations department validating the conflicts of interest created by the firm's Chairman working for a Savings & Loan. These reports were sent to the senior asset managers, senior contracts manager and the ethics officer at the Dallas Office.

This example is just one of many that resulted from the fact that the majority of the initial Dallas RTC staff consisted of ex FADA employees who took great pains to look out for the friendly contractors that they had previously done business with. The same people who were deeply involved in creating the Savings and Loan crises in the first place.

THE POWER OF SAMDA

An illustration of the kind of unethical practices used by some SAMDA contractors is summarized in my memorandum dated July 9, 1991 (attachment 2) to the Assistant Director of Contracts at the Dallas Metroplex Consolidated Office. The asset management contractor is demanding a non-refundable option fee of \$3,000 to process a sales contract for the purchase of properties. My memorandum was not responded to nor any action taken to correct these practices.

In interviews with Jim Douglas (attachment 3), the purchaser's broker, I was told that the asset manager indicated that they would accept \$1,500 instead of the \$3,000 to process the sales contract. When Mr. Douglas refused to pay he was not permitted to compete for listing agreements on which he had previously been the listing agent prior to the assets being assigned to this asset manager.

A second illustration of the awesome power that SAMDA contractors wielded is provided in the letter from Mr. Mike Doan (attachment 3) dated July 16, 1991. In the letter Mr. Doan states that not only is the SAMDA contractor arbitrarily deciding who will get discounted deals on the properties being sold but the SAMDA contractor bragged about the fact that it would do no good to complain to the RTC. In fact, in the past, complaints had been sent to former CEO Seidman, but the purchaser still had to come back and deal with the SAMDA. Such impunity was widespread and is one of the reasons why many subcontractors and buyers became discouraged and stopped trying to do business with the RTC.

The power that the contractor had over the friendly RTC senior management is further illustrated when considering the letter that this same SAMDA contractor wrote dated July 1, 1991 (attachment 4) to the Dallas Regional Director. The preliminary internal memorandum that I had written on June 25, 1991 (attachment 5) detailing wrongdoing was already in the hands of the contractor to the extent that they had heard—about the contents from “several sources at the RTC Regional Office and the Metroplex Consolidated Office.” It is probably just a strange coincidence that the special assistant to the then RTC Regional Director was also a former supervisor of the chairman of the SAMDA contractor who just happens to be in the direct pipeline for receiving RTC internal information.

RETRIBUTION MEASURES

Suddenly, without formal explanation, I was relieved as Contracting Team Leader and assigned duties as a librarian and FOIA response writer. While I was hired as an LG-14 contract specialist and had performed at that level, my new duties were that normally given an LG-9 or 11 apprentice specialist. I was not permitted to do any contracting or to have contact with any of our contractors even though as a result of my involvement in setting up the initial contractor registration program contractors were constantly calling me with their inquiries or complaints. In fact, many of the facts that I am able to present today are the result of contractor's complaints being sent to me.

As an illustration of how deeply ingrained this vindictiveness was with the Assistant Director of Contracts and his two direct reports, I refer you to my memorandum dated April 8, 1992 (attachment 6) which addresses two shortcomings of RTC's information systems.

As you are aware, timely information is the cornerstone of RTC being able to do business. I had observed that huge amounts of space were being used to store documents and many hours of clerical time spent retrieving documents. Also, many proposals, contracts, and other important documents are submitted to RTC by Fax. Because of time zone differences many of the Fax documents come in to our automatic machines during non-duty hours. There are times when I arrived in the office in the mornings that fax documents were literally strewn over the floor because the receiver box had overflowed.

I suggested using the new imaging software and computer boards since each contract specialist has a terminal. Significant savings would result from reducing file storage space, document retrieval time, minimizing lost files, reducing lost time of standing at fax machines, and having a chronological record of fax messages sent and received. The savings, if the system was adopted, was estimated to pay for the system in 90 days or less. My immediate management would neither discuss the

feasibility of these improvements nor forward the analysis to the experts in information systems.

RECOMMENDATIONS

In closing, Mr. Chairman, I would like to state that there were and still are many dedicated, hard working people within RTC who could do a much better job in Restoring the Confidence and Resolving the Crises if:

1. The hard core senior management at the field offices and headquarters who were responsible for the problems that I have addressed be removed. They do not believe that the new initiatives that Secretary Bentsen introduced will work since they have an inherent vested interest in maintaining the old system. After all, it was they who designed the old system, and to make the new system work would be absolute proof that their former approach was wrong. This is tantamount to self incrimination and no one can be expected to put diligent effort into such a cause.

2. Contracting be placed on an equal basis with asset management, operations and legal. Since the majority of the RTC business is done via outside contracts an objective, independent contracting group is essential. This is a fundamental management flaw to have the contracting officers identified as organizational second class citizens. The pressure from overzealous managers who are quick to let it be known that they control your paycheck can subvert even the most objective contracting officer.

Again, I thank you for the opportunity to appear before this committee.

MEMORANDUM

TO: Wayne Fogle
Deputy Ethics Officer

FROM: Jim Romer
Contract Specialist

DATE: November 19, 1990

SUBJECT: CERTIFICATION PURSUANT TO FIRREA AND 12 CFR PART 1606
PARTS 1606.6(6), 1606.7(b), 1606.10

REVIEW OF REQUIRED CERTIFICATIONS AND REGULATORY
COMPLIANCE FOR: SOS #761-9966-900139 - 143

Proposals responding to the above-referenced solicitation resulted in one of the solicited firms having some question as to compliance with the Regulatory Compliance phase of the solicitation (Conflict of Interest and Required Certifications). I have listed the firm and the questions with regard to their conflict of certification below. Also attached is Part B, "Background Information and Regulatory Compliance Section" of their responses to the solicitation for your review. Please review and advise of your determination of the issues in question on the respective firm.

FIRMCONFLICT OR CERTIFICATION PROBLEM

- | | |
|-----------------------|--|
| Pillar Investment Co. | <ol style="list-style-type: none">1. False statement of employment 1989 to present in part B.2. Non-disclosure of employment at an S&L as Sr. VP in charge of REO property from 1989 to present time.3. Claiming MWOB status when not active in the daily business.4. Experience qualifications in Pillar Real Estate Services not in Pillar Investment Co., who was the bidder.5. Pillar Investment Co. and Pillar Properties, Inc. both dba as Pillar Real Estate Services. Two separate corporations cannot ethically use the same dba. Pillar Investment was incorporated in 1979. Pillar Properties, Inc. was incorporated in 1989. |
|-----------------------|--|

6. Under Asset Management Experience in Section B, it is stated the Chairman Dianne Landen supervised the Asset Management/Disposition Department of 3 institutions with assets of 2.4 billion and managed portfolios of 1 billion for large pension funds, offshore investors and public firms. These are not listed under her stated experience in Section B.

The following is copied from section B Technical Section submitted October 25, 1990 to RTC in MCO Contracting in reply to SOS 761-9966-900139-CS and verified as correct by Ronald Landen.

DIANNE M. LANDEN
2900 Glencliff Drive
Plano, Texas 75075

EXPERIENCE

PILLAR REAL ESTATE SERVICES - 1989-PRESENT Chairman\Chief Executive Officer

- Supervised the reporting, planning, and submissions to the Financial Assistance Division of FHLB, for a Southwest Plan Institution.
- Consulting work with 2 major Southwest Plan Institutions to include:
- Financial assistance Agreement Compliance Officer/Covered Asset Portfolio Manager for a Southwest Plan Institution with a Portfolio of 300 Million.
- Review and prepare all submissions to FDIC in conjunction with Financial Assistance Agreement.
- Establish Marketing Strategies for Portfolio Dispositions of Assets.
- Review all Sales Contracts received on Assets to determine disposition viability.
- Analyze third party management companies to insure competent, professional management of Assets.
- Coordinate and review of Quarterly Yield Maintenance Reports with Accounting Personnel.
- Conducting Asset management Seminars for banking and Real estate executives.

Dianne M Landen was from 1989 and is still employed by Americity Federal Savings Bank. On November 15, I visited the offices of Americity Federal located at 750 N. St. Paul, Dallas, Tx. and verified with Dianne Landen's secretary and with the personnel department that Dianne Landen was fully employed as Senior VP in charge of REO and had been working there since Dec. 1, 1989. Failure to disclose this employment is a very serious violation of RTC regulations.

Attached is a Statement of Financial Condition, dated June 30, 1990, for Americity Federal Savings Bank, showing Dianne Landen listed as Senior Vice President in the officers list. This statement was picked up by me in the Bank office on November 15, 1990 when contacting the personnel office.

Seven phone calls to Pillar Investment Co. for Dianne Landen from me were made over a 2 week period. Dianne was never in to answer the phone and never returned a call. Her husband Ronald Landen returned one call left for Dianne. I have never been able to talk to Dianne because she was never at the place of business when calls were made at different times during working hours.

Page 24 in Section B states the firm maintains in excess of \$100,000 in banks and money market accounts for purposes of providing Adequate Liquidity. With a total assets as listed in Dun & Bradstreet in the amount of \$109,349 there is not much above the \$100,000 in an operating company. My visit to the office at 11910 Greenville Ave., Suite 200, that was 90% vacant would verify the above statement. The Dun & Bradstreet report is attached.

On November 19, I called the Corporation department of the Secretary of State for Texas and obtained the following information:

Pillar Investment Co. incorporated June 11, 1979

Registered Agent	- Ronald Landen
President	- Ronald Landen
Treasurer	- Ronald Landen
Director	- Ronald Landen
Secretary	- Dianne Landen
Director	- Dianne Landen

Pillar Properties, Inc. incorporated January 19, 1989

Registered Agent	- Ronald Landen
President	- Ronald Landen
Vice President	- Ronald Landen
Director	- Ronald Landen
Sec/Treas	- Dianne Landen
Director	- Dianne Landen

Pillar Real Estate Services is not registered with the Secretary of State as a corporation or as an assumed name.

In chapter 36.11 of the Texas Business and Commerce Code it states that any corporation doing business in the State of Texas under an assumed name shall file with the Secretary of State..

The civil penalty in Chapter 36.25 of the Texas Business and Commerce Code states that the dba not registered cannot defend or bring a lawsuit in the State of Texas and has to pay all court costs on any action brought against it.

The criminal penalty in Chapter 36.26 of the Texas Business and Commerce Code for failing to file a dba used by a corporation doing business in Texas is a misdemeanor with a fine of \$2,000.00.

Attached is a letter I received today from Karrey Turner, Personnel Director for Americity Federal Savings Bank at 750 N. St. Paul, Dallas verifying the employment of Dianne Landen as Senior Vice President-Cover Asset Department. Americity Federal Savings is Southwest Plan No. 11.

Attached is a memorandum from Elise Perkins thru Howard Blacker, MCO Investigations Unit, dated Nov. 9, with reference to Pillar Investment Co., Contracting Fitness and Integrity Verification Request.

Attached is a memorandum to Anna Croteau, Deputy Ethics Officer, from J. Robert Yenco, Contract Specialist MCO, for review and signed by Anna Croteau on Oct. 12, 1990. Many new facts have been discovered by further investigations and a new ethics review is warranted and requested.

Qualification of, Ethical Standards of Conduct for, and Restrictions on the Use of Confidential Information by Independent Contractors.

1606.6 Organizational conflicts of interest.

(a) The following information shall be required about the contractor and its related entities.

(3) The names of any contractor's related entities who have been or are directors or officers of an insured depository institution.

- Dianne Landen is a related entity, and is and has been employed by Americity Federal since Dec. 1, 1989. This employment appears to be an organizational conflict of interest.

(4) A list of all competing property of the contractor and its related entities, if the contract relates to the valuation, disposition, or management of real estate.

- Dianne Landen is Sr. VP, Americity Federal Savings Bank in charge of REO department. This appears to be an organizational conflict of interest.

(5) Information concerning any other business or financial interest of the contractor, or its related entities, which could adversely affect the contractors ability to perform under the contract or to represent the RTC.

- Dianne Landen as head of the REO department of Americity is selling to the same market as RTC is selling. This appears to be an organizational conflict of interest.

(b) Certification required.

The contractor shall also provide the following certification:

(1) That no organizational conflict exists as a result of the contractor's interests, relationships, or other RTC contracts.

- It appears that the failure to disclose the employment of Dianne Landen as Sr. VP or Americity Federal Savings is a conflict of interest.

1606.7 Personal conflicts of interest.(b) Information required.

A contractor shall obtain from its management officials and key employees the following information about the personal, business, and financial relationships of themselves, their spouses, and minor children.

(2) Relationships within the last five years with any other insured depository institution, or depository institution holding company, as an officer, director, or controlling shareholder or employee.

- No statement was made about the employment of Dianne Landen as SR. VP of Americity Federal Savings but it was stated that she worked for Pillar Real Estate Services 1989 to present and certified correct by Ronald Landen Registered Agent, President, Treasurer and Director of Pillar Investment Co. dba Pillar Real Estate Services. It appears that information about the employment of Dianne Landen was purposely withheld to avoid having a conflict of interest.

In view of the above facts, (I recommend) Pillar Investment Co. not be used as a contractor for RTC for SOS #761-9966-900139 - 143, and the firm be removed from the Contractor Data Base as a MWOB designation.

cc: Howard Blacker
William Roher
Janie Thomas
Don Epperson
Gary Gibson

November 27, 1990

Hand written statement on the right of note was dictated by Gary Gibson and written by Ed Isaacs as a substitute the last paragraph. Instructions were given to change this wording before taking to the Deputy Ethics Officer Wayne Fogle.

*We request that you
render a firm
opinion as to the
likelihood of using
Pillar Investment Co.
as a contractor
for the RTC.
Please respond
within 10 days.
Thank you.*

(b) Certification required.

The contractor shall also provide the following certification:

(1) That no organizational conflict exists as a result of the contractor's interests, relationships, or other RTC contracts.

- It appears that the failure to disclose the employment of Dianne Landen as Sr. VP of Americity Federal Savings is a conflict of interest.

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We request that you render a firm opinion as to the viability of using Pillar Investment Co as a contractor for the MCO.

cc: Howard Blacker
William Roher
Janie Thomas
Don Epperson
Gary Gibson

MEMORANDUM

TO: Don Epperson
FROM: Jim Romer
DATE: July 9, 1991
SUBJECT: Non-refundable option fee to process cash sales offer.

It has been brought to my attention that an Asset Manager for RTC has requested a non-refundable "option" fee in order to process a cash sales contract for presentation to the review committees of the AMC and RTC.

The following are the facts and are obtained from the attached documents:

1. Pillar Real Estate Services offer for sale of Asset #141. This asset is 54 remaining lots in Prairie Creek Addition Phase II. A price list on the 54 lots is attached.
2. Prairie Mound Limited Partnership, through their broker Jim Douglas of Douglas Properties on May 14, 1991 made an offer to Pillar Real Estate Services of \$12,500.00 each for approximately 50 lots for a total of \$625,000.00.
3. On May 16, 1991 in a letter to Prairie Mound Limited partnership, c/o Jim Douglas, Pillar Real Estate Services stated the May 14, 1991 offer had been reviewed and rejected. Included in the same letter was a proposal from Pillar Real Estate Services to sell the property for \$790,000.00. No mention was made in this proposal about non-refundable fee to process the sales offer.
4. Prairie Mound Limited Partnership immediately accepted, signed and returned Pillar's proposal, along with a contract of Purchase of Sale on RTC form.
5. In a letter dated June 6, 1991 from Pillar to this prospective purchaser, Pillar stated that, in order to process the document for presentation to the review committees of Pillar and the RTC, the following items were needed:
 1. Signed personal financial statement of the buyer
 2. Resume and background history of the buyer
 3. Non-refundable option fee of \$3,000.00

Jim Douglas states that after receiving the June 6 letter from Pillar, he was told by Pillar the offer by his customers would not be considered until the \$3,000.00 was paid. In a later telephone call Douglas was told Pillar would now accept \$1,500.00 in lieu of the \$3,000.00

Next, I wrote to Ms. Sullivan, RTC Regional Director, and hand delivered the letter to Ms. Sullivan on June 06. Her assistant, Ms. Mary Kieseewetter promised to look into the matters but not to my satisfaction. From the letter I received on 6/25 signed by Mr. Joel James, I have the impression that the letter was dictated by Ms. Diane Landen (Chairman of Pillar). Price was the only issue discussed and that issue was no longer valid. Pillar, since then has cut prices in half to sell to Builders! (See attached letters)

At this point, the internal investigation of Pillar R/E started:

- * Somehow, Pillar R/E learned of my grievances against the company within 24 hours. Mr. Ron Landen called me on June 7 and he laughed at my efforts. Some of his comments:

- * RTC can not do a damn thing for you! RTC has their own problems to worry about, they don't worry about your little offer! We have the authority to sell and make decision, not RTC!

- * Your Chinese buyers want something for nothing! If they want to buy something cheaper then you need to take them somewhere else!

- * It doesn't matter how long will it takes to sell the lots! We will be here!

- * To save you time, there were people complained about us before. They wrote to everybody: RTC, Congressman, Mr. Siedman, everybody you can think of but President Bush. But they did not get any results and they still have to come back to deal with us.

The lot that I was negotiating was priced at \$84,000 like the others 3 corners lot of the same intersection. All the lots were reduced to \$75,000 except the one I worked with. It stayed at the counter offered price \$78,750!

- * Mr. Ron Landen told me: Good things happened if you deal directly with Pillar instead of wasting your time going behind Pillar's back! It sounds like Mr. Ron Landen penalized me for going to RTC?

- * Mr. Ron Landen also mailed me a letter dated 6/26 and gave me two days to submit a full price offer. I received the letter on 6/28, the deadline in the letter!

All of the above statements represented indications of discrimination from Pillar R/E Services. RTC is a government agency and I don't understand how discrimination can be practiced by a contractor doing business with the government?

Enclosed are all the correspondences and the new price list. I hope you can help and I look forward to hear from you soon.

Sincerely yours,

Mike Dean

MIKE DEAN
ERA FIRST CITY

July 16, 1991

Mr. Jim Romer
Contract Specialist
RTC Regional Sales Center
3500 Maple Avenue
Dallas, Texas 75219-3935

RE: Marketing Practice & Discrimination of Pillar R/E.

Dear Mr. Romer:

I have had a lot of difficulties in dealing with Pillar Real Estate Services. I would like to call your attention into the matter.

Problems arose when I submitted a offer on behalf of buyers for lot 16, block C of The Hills of Indian Creek. The offer was a cash purchase for \$68,000 for the above lot. Pillar R/E rejected the offer and they said they will not take anything less than the \$78,750 list price. Because I was dissatisfied with Pillar's cold attitude, the inexperienced of their Marketing Director, Mr. William Mach, (Mr. Mach told me he was new on the job and knew little about the subdivision), and Pillar's understanding about market conditions, I contacted Mr. Corky Barton of RTC. He referred me to Mr. Joe Williams but I did not get any results. Mr. Williams told me about Pillar's promises with a land developer not to discount lots at The Hills. The result:

- * In early June, Pillar R/E reduced prices unevenly. Lot 16A, block B, a golf course lot was reduced from \$96,200 to \$49,000 and was sold to Builders. Several other golf course lots was reduced from \$113,000 to \$60,000 and again sold immediately to Builders (Lot 2,3,30,31,32,39,40 of block B, lot 1 of block D). There are others golf course lots reduced from \$115,000 to \$75,000 (lot 23,24,25,26,27,28 29 of block B). When I asked Mr. Ron Landen about these lots and hope he would consider for the Buyers to change lot, he then told me that he would not pay my office full commission.

- * A worthy note: The reduction was not publicized on Multiple Listing Services or News media nor Pillar informed me about it. I only knew about the price change from a builder.

- * Their sub-contractor, Clarem Realty Partners is not a member of Dallas nor Collin County Board of Realtors as RTC stated in SOS requirements. There are no signs posted from Clarem or Pillar R/E at the subdivision. The only signs which the public would see since early 2/91 are from A G Allen. (Mr. Allen is a Builder not working for Pillar). Anybody called from the sign then have to deal with A G Allen. (He likes to tell prospects that he owns all the lots!)



PILLAR REAL ESTATE SERVICES

2425 N. Central Expressway, Suite 268 • Richardson, Texas 75080 • (214) 644-7335 • FAX (214) 644-7332

July 1, 1991

Ms. Carmen Sullivan
Regional Director
Resolution Trust Corporation
3500 Maple Avenue
Dallas, Texas 75219

Dear Ms. Sullivan:

This letter is to advise you of an occurrence in the Dallas Metroplex Consolidated Office which requires your immediate attention. We have been informed from several sources at the RTC Regional Office and the MCO that Mr. Jim Romer has issued a memorandum which accuses representatives of this firm of asking for "bribes" in connection with the processing of REO Sales Contracts. The "bribe" refers to an Option Fee requested from a prospective buyer in connection with the sale of land in the Prairie Creek Subdivision in Flower Mound. The standard RTC contract provides for taking an Option Fee in connection with the sale of real estate. Pillar has done this on several occasions and all funds received as Option Fees have been placed in accounts designated for the RTC as Receiver.

The action taken by this employee is slanderous to the reputation of this firm and its principals and represents a defamation of character assault.

This situation is ridiculous when one considers that representatives of the RTC Inspector General Office have been virtually "living" in the office of Pillar during the last three months, and would have reported any misappropriation of funds. Additionally, this firm has been awarded a second Asset Management and Disposition Agreement from the Kansas City Consolidated Office.

We seek to have the contents of the foregoing memorandum to be publicly disavowed by its writer and by yourself. Since the rumors in the Metroplex Consolidated Office have become so widespread, we are concerned about its' future implications that may hinder Pillar's ability to obtain additional Asset Management assignments.

Carmen, our reputation is extremely important to us. Therefore we must request a meeting with you as soon as possible. The seriousness of this situation cannot be ignored.

I look forward to hearing from you.

Very truly yours,

Dianne M. Landon

Exhibit 4
-7 Stine
Pishmore
Jim Messer -
PLEASE REPLY
response.

g

1

MEMORANDUM

TO: Corky Barton
Jim May
Brent Ciurlino

FROM: Jim Romer

DATE: June 25, 1991

Subject: Phone inquiry - Jim Douglas on \$3,000 Non-Refundable Option Fee before a sales contract would be considered. by Pillar Real Estate Services a SAMDA contractor.

June 24, 1991 - Jim Douglas inquired of Jim Romer, Contact Specialist about RTC's requirements of non refundable processing fees to get a cash sale of 50 lots considered by Pillar Real Estate Services, a SAMDA contractor for RTC in charge of the lots for sale.

In 40 years as a Real Estate Broker and Appraiser, I had never encountered a processing fee having to be paid to the selling agent before a sales contract would be considered. Not being in a position of authority on RTC sales of assets, I contacted Corky Barton in the RTC Sales Department. Corky Barton took me to Jim Mays office where Brent Ciurlino was meeting. I presented the up front fee problem to Corky, Jim and Brent. Brent Ciurlino stated that if I could get written proof he would take appropriate action.

I drove to Jim Douglas office to get copies of the payment request from Pillar. Attached are the following:

1. Pillar Real Estate offer for sale of Asset #141, 54 remaining lots in Prairie Creek Addition Phase II. with an attached price list on 46 of the 54 lots.
2. May 14 offer of \$12,500 each for 50 lots or a total of \$625,000 with a contract drawn on RTC forms
3. May 16, 1991 counter offer received from Pillar stating they would consider \$790,000 cash offer. The proposal was accepted, signed and returned to Pillar along with a Contract of Purchase of Sale on RTC forms. No mention was made in the counter offer about up-front non-refundable fees.
4. June 6, 1991 letter from Pillar Real Estate Services to Jim Douglas, the selling broker, stating that in order to process the sales offer a non-refundable fee of \$3,000. would have to be paid.

5. June 14, 1991 letter from Jim Douglas to Pillar about bank contacts regarding the buyer.

In a personal interview with Jim Douglas the following facts were stated:

1. When Jim Douglas said he would not pay the \$3,000, Pillar stated that they would consider the offer for \$1,500. Without payment of the \$1,500 the offer would not be considered when the Pillar committee met on Monday June 24.
2. Douglas refused to pay the \$1,500.
3. Jim Douglas was listing agent on three properties prior to Pillar SAMDA contract and was excluded from the opportunity to compete for the listing agreements when Pillar took over.
 - A. Bethany 409, Allen, Texas
Douglas had previously sold two tracts, one for \$40,000 per acre for 50 acres and 25 acres for \$25,000 per acre in the previous year. There is a lawsuit on the property involving RTC and Wayman Lavell who has offered to settle the lawsuit for \$8,000 per acre. Bill Lacy now has the listing and is now trying to sell at \$10,000 per acre on a bid situation that requires a \$5,000 non-refundable option fee. The new appraisal is \$21,000 per acre.
 - B. 1000 Oa's Subdivision, Lake Dallas & Cornith. Jim Douglas has sent in two offers to Pillar but has received no response. On this subdivision there are a number of unresolved problems, an illegal sewer line across the property and a \$40,000 fee is owed to the City of Lake Dallas. Douglas has offered information to Pillar to help resolve these situations, which Pillar declined.
 - C. West Gate at Wiley. Jim Douglas sold 100 lots to Fox Jacobs Builders and submitted contracts on the balance of the lots to Pillar and was told they were not part of the assets. After 6 or 7 weeks Douglas convinced Pillar that the lots were part of their assets but Fox & Jacobs is now out of lots and Pillar states that they cannot sell any more lots until they get a new appraisal, by that time Fox & Jacobs will be gone.

It appears the new agents do not know any of the past history of the property and Pillar has told Douglas they do not care what happened in the past. Ron Landon told Douglas the reason he was not considered to continue listing the properties was that he did not come up on the list.

Jim Komer checked on the selection of a broker by Pillar for property located in Lewisville one half mile from the listing brokers office. The list of brokers for the property were selected from a zip code in Denton, Texas which is several zip codes away from the property.

To get further information in writing, I drove to ERA First City Realty, 2312 Trinity Mills, Road, Carrollton. Tx. and visited with Mike Doan and his broker Fred Marsh. Below is what I learned from the conversation.

Mike Doan had a customer for a lot in Hills of Indian Creek. Mike drove to the lot sites and the only for sale signs that were on the property were those of R. G Allen. R. G. Allen told Mike the lots belonged to RTC but would not give him the name of the agent. Mike learned that Pillar was in charge of the RTC lots. On contacting Pillar, Mike talked to William T. Mach, Jr. marketing manager for Pillar about a lot for his client and was given a one page outline of the project the only information Pillar had available for a prospective buyer although Pillar had been managing the property since last December. Mach explained that he was new to the job and knew very little about the properties.

Mike Doan produced a copy of a letter to Carmen Sullivan dated June 2, 1991 explaining his not being able to get an offer accepted for \$68,500 cash for a lot not joining the golf course that was appraised at \$84,000 when a lot that was appraised at \$103,000 was sold for \$49,000 to the builder, R. G. Allen who had his for sale signs on the RTC properties for months. It was also learned that the same builder had purchased several lots at \$60,000 that were appraised at \$103,000.

Ron Landon told Mike Doan he liked to sell to builders and not to individuals but if he would work with him he would get a better deal than with RTC.

Joe Williams told Mike that his offer was a good offer but that Pillar is not going to sell that lot because Pillar promised to sell only to builders.

Mike talked to Ron Landon, Thursday, 20th of June and was told that he had sent letter to RTC and it does no good and he knows the man who will do the investigating.

Mike talked to Dianne Landon and she said she wanted to sell the lot but he needed to get buyer to go up on price.

Ron Landon called back and laughed at Mike, stating contacting RTC doesn't do any good. Bring the price to full price and you will get paid 6%. From now on he will only get 3% and the other 3% will go to Clarion Realty after July 1. Ron said he will decide who gets a contract.

Attached are the following documents received from Mike Doan:

1. June 2, 1991 letter to Carmen Sullivan.
2. June 6, 1991 answer to letter by Mary Kieswetter.
3. Copy of Pillar Price list for Hills of Indian Creek.
4. Copy of a new June price list from Clarion Realty Partners showing lot F16A priced at \$49,000 and marked sold with the adjoining lots priced at \$84,000.
5. Copy of lot plans for Hills of Indian Creek.
6. Copy of letter to Mike Doan's friend Richard.

After the meeting with Mike Doan, I drove to the subject lots and took pictures to show the comparison of the two lots, the one sold for \$49,000 located on the golf course and the one refused at \$68,500 located off the golf course. I also took pictures of the builders for sale signs on RTC property and noted that there is no way for a prospective buyer to know that the lots belong to RTC and are for sale by a broker.

Attached are following:

Copy Pillar's price list for Asset #114
 Copy price list from Claren Realty Partners
 Pictures of Lot C 16 taken from W, N, E & S. priced \$78,750 to Mike Doan. This lot is off golf course and not level.
 Pictures of Lot F 16 A taken from W, N, E & S. Sold for \$49,000. This lot is located on golf Course and is flat.
 Pictures of Lot B 39 taken from W, N, E & S. Located on golf course sold for \$60,000.
 Pictures of Lot B 40 taken from W, N, E & S. Located on Golf course.

Normally golf course lots are priced from \$15,000 to \$40,000 higher than the lots not on the golf course. Because of view and golf course location of the three lots sold above, Lot C 16 which Mike Doan is trying to buy value is at least \$15,000 less than the lots sold.

Pillar Real Estate Services is discriminating against a Minority-Oriental Real Estate Agent. If this discrimination continues, it will cause a lot of bad publicity for RTC and possible Congressional investigation.

On Monday, June 24, 1991, Ron Landon and Dianne Landon in a phone conversation with Mike Doan demanded full price on the lot of \$78,750.

I believe these are the written facts that Brent Cirilino asked for so that he could take the proper action.

cc Fred Born
 Lloyd Edwards
 Don Epperson

TO: Fred Born
Lloyd Edwards
Don Epperson

FROM: Jim Romer

DATE: April 8, 1992

SUBJECT: ~~Installing an~~ imaging system on Banyon Network, ~~to~~ reduce ^{12nd} operating costs and ~~improve quality of work~~ ^{work}

^{Spec} Production of RTC personnel can be increased by over 30% by using imaging software on the computer network.

Please review this memo for presentation to the RTC Automation Committee at its next meeting.

Installing and using an imaging system for storing and retrieving documents will reduce operation costs. .

- Save time in document retrieval
- Reduce file storage space and costs
- Eliminate lost files
- Record chronologically faxes sent and received
- Make disaster recovery quick and inexpensive

Time saved in document retrieval time will reduce costs. .

A document can be retrieved by any word or combination of words in less than 15 seconds. That is less time than it takes to tell a secretary to bring a file. Time for action can be increased from 20% to 60% by reducing the time finding document from 50% of our time to 10%. Time saved will pay for the total system in less than 60 days.

Storage space and cost of file cabinets will be reduced.

An optical disk the size of your hand will store 20,000 documents or the equivalent of a 4 drawer file cabinet. File space will be saved and cost of file cabinets will be reduced.

Eliminating lost files will improve productivity.

Three per cent of all files are lost. Lost files cost time and money. In the future files will be permanently stored on optical WORM drives for permanent legal record. Any file can be brought up on computer screen quickly.

Time wasted standing at the fax machine will be eliminated.

May hours are lost by people standing at the fax machine. On the proposed software system faxes are received automatically on computer. Fax is relayed to the correct person or persons on the network where it can be read or printed. Any document can be sent by fax by typing the phone number and pressing F. The time saving from hours lost at the fax machine will pay for the installation.

Disaster recovery will be a reality at a very low cost.

Duplicating the optical disk and storing at another location will insure recovery of records should a disaster happen. Disaster Recovery without duplicate records could cost millions.

Please present this program at the next meeting of the RTC Automation Committee. This investment will increase productivity by over 30%. The software to cover 20 users can be purchased for \$8,000.00. The savings in personnel costs will pay for the installation of the system in less than 60 days.

Thank you for your consideration of this document imaging plan. If you desire further details please call Jim Romer at 443 2298.

Sincerely,

Jim Romer

TESTIMONY OF DEBBIE SHERRILL

My name is Debbie Sherrill. I am from Russellville, Alabama, near Florence, and I work at the RTC office in Atlanta, Georgia as a Claims/Settlement Specialist. I have been at the RTC three years. Previously, I worked for a bank.

I came to the RTC in 1990 in hopes that I would be able to help the government take over the failed savings and loans and sell off their assets and learn something in the process. I expected that RTC would do its job according to the law and reasonable business practices. I found, unfortunately, that RTC could not do this job. So I am here today, as a concerned taxpayer as well as an employee of the RTC to tell this committee of the waste, fraud, abuse and mismanagement that I have personally seen. Frequently, managers were promoted to positions that they could not perform properly. Because unqualified people were hired, they were often not competent to perform their jobs, and very substantial sums of money were lost. I also found that unqualified people were especially unlikely to accept suggestions for improvements. Such suggestions were taken very personally and rejected, often with the employee being reprimanded for making the suggestion. Because unqualified people were hired, they protected one another, promoted one another, and too often drove out the good people.

The following stories are only a few examples of the waste, fraud and abuse I have encountered at the RTC. Some of the examples are directly due to incompetent management. Others are fundamental institutional problems.

- **One example of management incompetence:** RTC is legally required when it sells financial assets to a bank to pay interest on any assets that are not delivered on time. When a deal is made, assets must be moved within a certain time frame so that RTC does not have to pay interest to the acquiring bank. Our staff is not competent to make decisions, and often defers making those decisions. While the staff waits, because of the department head's ability to make decisions, the money sits there. Deals that should take place the next business day instead are taking three days to three weeks or more, and during that time, the RTC is accumulating liabilities to the acquiring bank. We have to pay the acquiror interest based on the T-bill rate plus 100 basis points. At one institution I had over \$4 million dollars sitting in an account paying approximately 8 percent, interest on. The RTC wastes tens of thousands of dollars a deal.

- **Contractor waste, fraud and abuse is a rampant problem.** For example:

1. *Padding of bills.* Firms are billing for more hours than were actually worked and/or billing for more hours than is reasonable to complete the task.

2. *Unqualified, incompetent staff.* Firm sends untrained and unqualified personnel to field site even though contract calls for experienced personnel. Result is inaccurate data and inferior work product.

3. *Under bidding for contract, then once awarded contract firm is re-submitting an amendment to contract increasing the cost 2 to 3 times.* Example: A Big Six accounting firm original bid was \$95,000 for the Claims/Settlement portion only. They were awarded the contract. Within the first few weeks of the contract the firm submitted an amendment for over \$270,000. That's an increase cost of \$175,000 for just my department. I shutter to think of what the entire contract cost was! RTC accepted the adjustment.

4. *Delaying review of contractor work and responsive action when problems occur.* Example: Firm was hired to conduct an Furniture, Fixture & Equipment appraisal and branch facility appraisal in South Carolina. When the appraisals were submitted it was evident that the appraisals were blatantly wrong. There was furniture and equipment listed that didn't even exist. Furniture and equipment items were listed as being located in one branch when in reality they were at another location. Due to geographic location of the branches a reasonable time frame to complete this project would be three to four days. The project was completed in one! The presentation and quality of work submitted was very poor. Yet knowing all of this, RTC paid for the appraisal anyway. RTC's response was to hire another contractor for a second appraisal; costing the RTC approximately \$100,000 for a project that should have cost approximately \$30,000.

Another example of RTC management's unwillingness to take action to confront contractors was with a Big Six accounting firm hired to complete a project in Richmond, VA. RTC needed to cancel the contract. The quality of work was very poor, inaccurate data, deadlines were not met. Even the acquiring institution complained about the contractors performance. I discussed these problems many times. I refused to sign-off on bills submitted by the firm. I refused to sign-off of actual institution work submitted by the firm. I discussed these problems with the firms managers and RTC managers. RTC paid the firm anyway.

These type of incidents are very disturbing to me because these same contractors and appraisers are submitting bids for new jobs and getting them even though the work product has been proven to be sub-standard quality. We hired these people, we could also fire these people. But because of the insecurity and incompetence of the management staff they are not willing to take responsibility for firing or canceling a contract. We are talking about hundreds of thousands of dollars of waste on this single project.

5. Hiring of too many contractors to audit other contractors. This is ludicrous because someone in my position audits the work, then PCR audits the work, IG audits the work and GAO audits the work. Despite all of these audits, we hire a contractor to audit the work again. These audits are costing hundreds of thousands of dollars. We already know what the problems are long before these extra audits reveal them. But although we know it, too often nothing is done about it because no one is willing to take the responsibility for initiating any action. Why, because incompetent managers are often too afraid to make a decision.

6. Much of the work conducted by the contractors could be done in-house. We already have the trained staff to do what the contractors are hired to do. But we hire the contractors anyway, usually more than are needed for the job. When I expressed concern about this, my manager said, "don't worry about it. Congress wants us to hire contractors." The consensus of the office is: If we don't want to do a particular task simply hire a contractor. The result: We wind up paying them when they do no work and unnecessary work to justify hiring them so it doesn't look bad.

When you don't conduct timely and stringent oversight of the contractors the waste, abuse and fraud are going to happen. I cannot say for sure how much fraud there is, but when you give people an open door to rob you, how many people are going to take advantage of you? Audits six months later won't protect you.

The most frustrating part of all of this many of these problems are very fixable. But all too often, when suggestions are made to correct these problems you are reprimanded and criticized by management for doing so. Because you are asking managers to do what managers are supposed to do: To make decisions that may require certain actions to be taken to either correct or prevent a problem. Unqualified, insecure managers are not capable of doing this. Result: The problems get worse.

• Other examples of upper managements lack of response to complaints and issues of concern. I was given an "detailed" assignment in West Virginia which required that I stay at the field site until a person could be hired to permanently fill that position. The person hired had a severe drinking problem. He missed key meetings with the banks staff and the acquiring institution. His secretary found liquor in his desk. Twice the local police found him on the street "passed-out" and had to take him to his hotel. Many complaints from the president of the acquiring bank, his own staff and myself were brought forward. I discussed these problems with our director, wrote memo's; yet weeks went by with no action taken by management. Action was finally taken when RTC realized the acquiring bank was going to take the issue to CNN media news network. Result: The employee transferred back to the office in Atlanta, no reprimands were given, and within six months was given a promotion. I could go on and on with similar stories.

• Other areas of waste and abuse due to mismanagement. The key personnel's apathy for RTC rules and regulations and their display of this apathy to their peers and subordinates. I've had two supervisors who blatantly disregarded policies and procedures. Who practiced intimidation, various forms of sexual discrimination and harassment to manage their staff, reprimanding or firing anyone who questioned these actions. Yet, no actions were taken by the supervisors for their conduct. Result: The managers are promoted, your most qualified employees either leave or are fired, the employees that do stay are too afraid to do anything about problems they encounter for fear of losing their jobs.

Often I've heard these supervisors and other department heads say, "RTC is a special entity that is not held accountable under the same rules and regulations as other government agencies. This type of attitude leads to abuse and waste at every level. From employees abusing sick time and overtime to management discriminating and harassing employees. Written policies and procedures are in place at RTC but they are not enforced.

As I have told Committee staff, I have seen various form of sexual discrimination and harassment at the RTC and other personnel problems there, some of which has been quite serious, which I would be willing to discuss to some extent in the event that you wished to question me about it.

TESTIMONY OF WILLIAM A. HENDERSON

RTC EMPLOYMENT HISTORY

My name is William A. Henderson. I reside in Atlanta, Georgia, I am a *legal information technician* in the Resolution Trust Corporation's (RTC) Atlanta office, Legal Division. Prior to my RTC assignment, I worked as a *case management technician* in the Federal Deposit Insurance Corporation's (FDIC), Atlanta Office, Legal Division. I was an FDIC employee from September 2, 1986 through August 9, 1989, the date the RTC was established under the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA). In order to staff its newly created offices, hundreds of experienced FDIC employees, including myself, were "loaned" to the RTC.

MISMANAGEMENT

As a *legal information technician*, I was reassigned to the RTC to input, and maintain data pertaining to legal bills submitted by law firms hired to perform legal services for the RTC. I currently work in the RTC's Legal Information System (RLIS) Unit. Since its inception, the RLIS Unit has been plagued with mismanagement. Attorneys representing outside law firms with overdue RTC bills have been allowed to enter the RLIS Unit, often times unescorted. Presumably a breach of security, they have been allowed direct access to the RLIS computerized system which enabled them to have access to confidential billing, and payment information. As a result, these attorneys were given the authority to use the RLIS system to pay their own bills.

Due to management's negligence, I have seen duplicate, and even triplicate payments dispensed to law firms for a single invoice for legal services. Such blatant negligence, and unethical practices directly violates the RTC's mission to maximize return, minimize the losses of managed, and resolved savings & loans.

WASTE

Following the restructuring of the RTC, which closed and consolidated several offices around the country, the RTC had been inundated with numerous gratuitous moves. Several sections, and divisions of the RTC have been required to move three or more times in less than a year. Most of the moves do not unite these sections or divisions, nor do they generate additional work space for them. Although the moves are often within a close proximity, and do not involve furniture to be moved, professional movers are hired. Professional movers, under contract with the RTC, move employee boxes from one building to another, or from one floor to the next within the same building. The moving section or division's computers, and telephones are moved or electronically reassigned internally. The internal department(s) bill the time for moving the equipment to the moving section or division.

Generally, the moves last approximately eight hours which means the professional moving contractor bills the RTC eight or more hours for every move. The internal department(s) responsible for moving the computers, and telephones bill the moving sections or division for the move, and any preliminary time spent to prepare for the move. All moves, necessary or otherwise unnecessary, are billed at taxpayer expense. In addition, during a move the employees of the moving section or division are unable to perform their designated tasks for an entire work day. Therefore, the entire section or division is incapacitated for an entire work day.

DISREGARD FOR FEDERAL RULES AND REGULATIONS

The flagrant disregard for rules and regulations is pervasive throughout the RTC. Managers often chide "we are RTC: not FDIC" or "this does not apply to the RTC," therefore implying the RTC does not have to abide by the same rules and regulations as the FDIC. Management's perception that the RTC is "a quasi government organization" has breed an atmosphere of arrogance. Since they believe they are not a full fledged government agency, they have a mandate to pick and choose which Federal government rules and regulations they want to follow, and those they wish to disregard. This has led to numerous ethics, Equal Employment Opportunity (EEO), and Office of Personnel Management (OPM), violations.

When addressing the concerns of career Federal employees (General Graded employees), and their return to the FDIC, commonly referred to as the "putback," the RTC's actions not only demonstrate a disregard for, but an ignorance of, OPM guidelines, rules, and regulations. As a result, the RTC did not use OPM guidelines,

rules, and regulations to plot the course of the "putback" when it began over a year and a half ago.

EEO: INEFFICIENT AND INEFFECTIVE

The RTC has reduced EEO to a puppet operation. EEO's autonomy to resolve complaints without management's interference is nonexistent. Essentially, the RTC's EEO office is a pro-management organization used by management to quash rather than resolve EEO complaints. Currently, the RTC's EEO Office is clogged with complaints that are still in the informal preliminary stage of the complaint process, and have been stalled in that stage for more than a year.

As an EEO representative, I have represented at least five complainants in the past year and a half. During that time, I witnessed management's refusal to cooperate with EEO officials. This refusal to cooperate includes the failure to provide investigators with request for documents, and oral testimony. As a result, investigators have difficulty following the EEO timetable which governs every step of the complaint process. Therefore, employees have no viable means of resolving discrimination complaints against the RTC.

CONCLUSION

The RTC's propagandist tactics, discriminatory practices, and unethical behavior have bred an atmosphere of distrust and paranoia within the organization. Management's attempts to address the problems I have just discussed are nothing more than superficial remedies used to cloud the issues and pacify its employees. It is my hope that my testimony today illustrates a need to provide meaningful solutions to the problems which ail the RTC. Thank you.

STATEMENT OF DEANNA SMITH

I am pleased to appear before the Committee today in response to your request concerning my experience at the RTC. I am today employed by the FDIC in the Atlanta Regional Office as an administrative assistant with responsibility for payrolls and travel vouchers. I had one particular experience at the RTC which I believe represents a clear case of waste, fraud and abuse. I held a similar position at the RTC to the one I have now at the FDIC.

I was originally hired by the FDIC Legal Division in the Atlanta Regional Office. FDIC trained me in the handling of vouchers and receipts by employees when they claim reimbursement for business related expenses. Obviously, one of the main things you are looking for when you handle such vouchers is to protect the FDIC insurance funds by making sure that people are not getting paid by the government for personal business. I was trained by the FDIC to look out for such practices.

Our office was converted from the Atlanta Regional Office of the FDIC to the Eastern Regional Office of the RTC, which is taxpayer funded. After management was changed from FDIC to RTC in 1991, I found an apparent problem on a travel voucher submitted by the net Deputy Regional Counsel.

The nature of the problem was charging a rental car for personal use and billing the RTC. I was asked to review the manager's travel voucher prior to its formal submission, and I did so. When I did, I confronted him about the rental car charge. He acknowledged that he had used the car for personal business. I told him he was not authorized to charge personal expenses on the government's Diner's Club charge card, and I wanted to give him an opportunity to correct the voucher before he submitted it for reimbursement and auditing. He screamed at me and told me that I didn't know my job. I told him that it was very hard for me to confront someone in his position with this, and hoped it would not be held against me. I told him I would call Washington about this. He told me he would call Washington as well.

I called Washington and spoke with the person in the travel unit. I asked if the charge was appropriate and whether I was correct. They told me I was. I told them they might want to start pulling his vouchers to check them. They told me to tell him the charge was wrong, and that he should not do it again. I relayed the message to him and it made him even madder. Nothing was ever done to discipline him that I know of. I don't recall seeing the voucher again. I have no way of knowing whether he corrected the voucher. If he didn't correct the voucher, I do not know whether he ever paid the charge back. I later heard from employees in other offices that he had a problem with travel vouchers. As of today, this manager is still at the RTC.

Needless to say, I believe that I experienced retaliation as a result of having insisted on following the rules and reporting the travel voucher problem. Several times it had been suggested to me by the head of the office that I would be selected for an administrative assistant, training, position which had promotion potential. I was not selected. RTC later sought to relocate me to the Philadelphia RTC office, which I fought. About eighteen months after the incident, I was fortunate to be returned to the FDIC.

This experience was very chilling to me. It makes me hesitant to pick up the phone to report waste, fraud, or abuse to the Inspector General hotline, because if I do, someone may find out and I may be punished. As a taxpayer, I also was very angry, because it was a case of the government being ripped-off. I thank the Committee for the opportunity to testify today.

TESTIMONY OF ANNETTE LEPIQUE

Hello, my name is Annette LePique, I am an employee of the RTC Newport Beach, California Office. I wish to begin by, thanking Chairman Reigle, Senator Barbara Boxer and all the Members of the Committee for the invitation to appear this morning. I am here today to speak about my personal experiences at the RTC regarding fraud, waste and mismanagement, specifically as it relates to the handling of claims of discrimination and harassment.

PROFESSIONAL BACKGROUND

I am a native of St. Louis, Missouri, with an undergraduate degree in Social Work, and a Masters Degree in Public Administration from the University of Missouri. I came to work at the RTC in February, 1990, after many years experience in the affordable housing field. I transferred to the California Office from the Kansas City Office to assume the position of Affordable Housing Specialist, responsible for that program in the states of California, Hawaii, Oregon, Washington and Alaska. After enjoying years of success working primarily in the Midwest, Southeast and Colorado, I viewed this as a tremendous opportunity to truly gain a national perspective on Affordable Housing issues. I felt particularly challenged and excited about working in California, a state with a tremendous need for affordable housing. I left family and friends to begin my new life and career in California July 2, 1990.

PERSONNEL PERSPECTIVE OF RTC'S AFFORDABLE HOUSING PROGRAM

RTC's Affordable Housing Program was created in 1989 in the original Financial Institutions Reform, Recovery, Enforcement Act (FIRREA). The program has proven itself to be one of the truly bright spots in the Savings and Loan clean up, providing rental opportunities for thousands of low-income Americans, and home ownership to low- and moderate-income taxpayers who had previously only dreamed the American dream. I was proud to be a part of this program in the early days, establishing sales guidelines, policies and procedures. We successfully took the message of our program to the local communities in California, so desperately in need of this precious commodity. I worked closely with the staff of all the offices, including D.C. The California Office found itself the owner of affordable housing in over thirty states besides California. This was a result of California savings and loans having made or purchased loans with underlying collateral in other parts of the country. My affordable housing experience was to become truly national in a very short time.

SEXUAL HARASSMENT AND GENDER BASED DISCRIMINATION

Over a period of nearly two and one half years, I endured the sexist remarks, derogatory statements and actions of my supervisor, as senior management look on and did nothing. One complaint filed against this individual in September, 1991 resulted in a settlement with the woman, who left the REC shortly after that. He on the other hand, was promoted several times. His actions were totally inappropriate for the work place, and almost always involved women subordinate to him. The truth is, given the hiring policies of the REC, it would have been difficult to find any women who weren't subordinate to him. Women simply do not exist in the upper levels of management at the REC.

As a witness in one of his previous EEO actions, I was targeted for retaliation. With the arrival of Mr. A.J. Felton, personal friend of Mr. Stanley Tate, and Philip V. Jones Jr. to the California office, as Vice President and Deputy Vice President respectively, the stage was set. Having no knowledge of the operations of the Cali-

ifornia office, my harasser became the de facto head of the office. My harasser wielded tremendous power and influence in the office, promoting friends and punishing enemies, usually women and minorities. When I was recommended for a promotion to the LG-15 in July 1992, commensurate with my duties as now Department Head of the Affordable Housing section, the silence from top management was deafening. Finally in November, 1992, after searching, several months for a reason, Mr. Philip Jones Jr. informed me that I would not receive the promotion to LG-15. In that same two week period, rumors of my alleged sexual activities again surfaced at the office, and I was once again subjected to a sexist comment, this time in the presence of my family and friends at an REC sponsored function. Enough was enough. On November 19, 1992 at approximately 10 a.m. I called Washington D.C. and initiated a claim of sexual harassment, gender based discrimination and retaliation against three most senior managers at the REC California Office.

FILING AN EEO CLAIM

Since California senior management had never bothered to appoint EEO counselors, I requested an EEO counselor from the Kansas City office, one I knew to have a fairly strong commitment to affirmative hiring and a fair and equitable work place. Of course everything is relative when you work at the California Office! A counselor was assigned immediately, and the investigation began.

The investigation was informal, but comprehensive and well documented. The assigned EEO counselor, Don Sears, was objective, thorough and completed the investigation in a timely manner. EEO staff from our D.C. office, were professional and very responsive to my questions and concerns. The investigation was completed on December 18, 1992 a month after it began. During that thirty day period, my harasser was transferred to another Executive level position. The final report affirmed my claims of harassment, gender based discrimination and retaliation. The findings were presented to senior management over the phone the same day.

RETALIATION

On November 19, 1992 at approximately 5:30 p.m., I was handed what was to be the first of many adverse personnel actions taken against me. Less than eight hours after filing for protected activity under Title VII, Philip V. Jones Jr. led the charge against me, in the form of this first action. I had dared to challenge his decision, and I had taken on the "good old boy" system.

Before the EEO counselor could begin his investigation, Mr. Felton and Mr. Philip Jones began an independent, unauthorized investigation of their own. My department, as well as myself were the subject of this investigation.

Throughout the remaining days of November into the first week of January 1993, my entire operation was reviewed, every transaction put under a microscope, and every file was pulled for review. The final investigation was completed and published in early January. Since there were no negative findings, it was never mentioned again, and I was not given a copy of it until March 22, 1993, long after I gave up asking for it.

Having failed to turn up information to support the claims against me, a meeting was scheduled to review my performance. Four separate performance reviews were completed, all back dated, some for periods I had already been reviewed. All showed progressively deteriorating performance. A letter of termination was prepared as well, but was not given to me at that meeting. At that time I was represented by counsel, and attended the meeting with my newly hired attorney, John W. Lewis.

I was to receive in the next two and one half months, a total of seven reprimands, all of which I added to my EEO complaint, or filed administrative grievances. Not once did senior management grant me any type of relief. In a letter to my attorney Mr. A.J. Felton denied the existence of my signed annual performance review. He refused to acknowledge the existence of the original signed document, regardless of the proof offered.

FRAUD, WASTE AND MISMANAGEMENT AT THE RTC

My reason for appearing today is not to discuss in any great detail the affect these events have had on me personally, rather to outline for you the costs to the corporation in time wasted, actual dollars spent, and staff turnover resulting from severe moral problems related to these injustices.

The investigation of the Affordable Housing Department took approximately six weeks with three staff persons working full time on it. In addition, my entire staff, then four people devoted a significant amount of time daily to assisting the inves-

tigative team. This represents a needless waste of thousands of dollars of taxpayers money, simply in an act of retaliation.

This was not the only investigation ordered by Mr. Jones and Mr. Felton relative to my complaint. Ignoring the findings of the EEO investigation, and against the advice of REC legal staff, Mr. Jones launched an internal investigation of the sexual harassment claim. Interviewing only certain employees, ultimately totalling ninety-four persons, a court reporter documented answers to a series of questions ostensibly to get to the truth. Employees who did speak out, even with the promise of confidentiality, were immediately summoned to Mr. Jones' office and queried about their statements. In spite of the adversarial nature of the proceedings, some thirteen hundred pages confirmed what management refused to believe. Sexual harassment and improprieties were widespread and unchecked in the California Office. After spending several more thousand dollars on this investigation, something had to be done.

The senior manager alleged to have harassed me was never at any time reprimanded by his superiors, Mr. Scott Darling, Mr. Jones and Mr. Felton. On the other hand, I had a personnel file, prior to November 19, 1992 unblemished, full of adverse actions. They had something a little different in mind for him.

Following the third investigation, the alleged harasser was "detailed" to a subsidiary of Home Fed Bank, Home Capitol, in San Diego, California. Here he was to remain for the next seven months, on full pay, ostensibly on a "special assignment." Travel records that I have attached to my written statement clearly show that his assignment did not include going into the office, he was hiding out in San Diego, courtesy of Mr. Jones, Mr. Felton and most importantly, the Federal taxpayer. At a cost of approximately \$700 per week in lodging, per diem, and travel expenses, in addition to his approximate \$2,000 a week salary, he was kept in hiding in San Diego, California. Travel records clearly show there was no "special assignment" he in fact was not even going in to the office.

These events related to an EEO claim, have now cost the taxpayers hundreds of thousands of dollars in excessive and sometimes useless investigations, lost staff hours, and plummeting moral at the California Office.

TESTIMONY OF SANDRA CRISMAN

I would like to begin by thanking the Chairman and the Committee for the invitation to appear this morning. I am here to describe my personal experience with gender based discrimination at the RTC and Senior Management's response to my filing an EEO complaint. I believe my experiences can be summarized in five statements.

1. I was denied a promotion which I had earned.
2. Management's attempts to justify the denial were false and inappropriate.
3. Following the filing of my EEO Complaint, Management engaged in acts of reprisal against me.
4. Management's stated standards of performance were not applied consistently between male and female Department Heads.
5. Despite the RTC's confirmation of discrimination and reprisal in my case, RTC's Executive Management here in Washington promoted the individual who discriminated against me.

PROMOTION DENIED

My professional career has spanned both the public and private sectors. Prior to joining the RTC, my career included five years experience with the Internal Revenue Service in Human Resources Management and three years experience with Hughes Aircraft Company in Aerospace Contracting. I possess a Bachelor's Degree in Management and a Master's Degree in Finance.

My employment with the RTC began in July 1990, when I was hired by the California Office as a Contract Specialist LG-13. In March 1991 I was appointed as Acting Department Head for the Contracts/REO Department. The position was posted at the LG-15 level in June. I applied, was selected for the position, and promoted to LG-14 in August 1991. At that time I was told by my supervisor William Sylvestre, Assistant Director, Contract Management, that if I performed satisfactorily I would be promoted to the LG-15 in one year. Working one grade below the level of the position was not uncommon as OPM regulations prohibited advancing more than one grade per year. Mr. Sylvestre left the Contracts Department in March 1992, and Janie Thomas was appointed as Acting Assistant Director, Contract Management.

In June 1992, I received a Superior Performance Award. On July 13, 1992, I received an excellent performance review from Ms. Thomas. Her supervisor, Al Porterfield, Director of Administration, added the following comment to my appraisal "Thank you for the fine performance, please keep up the outstanding performance next year." Ms. Thomas recommended my promotion to LG-15 and Mr. Porterfield submitted the recommendation to Phil Jones, Assistant Vice President, California Office. On August 11, 1992 I was informed by Janie Thomas that Mr. Jones had denied my promotion.

MANAGEMENT'S ATTEMPTS AT JUSTIFICATION

I believe that Mr. Jones' reasons for not promoting me were contrived in failed attempts to justify his discriminatory actions.

Sales Goals'

At the time my promotion was denied, I was told that Mr. Jones would not consider approving my promotion until after September 30, 1992, at which time he would know whether the California Office had met its annual sales goals. However, I had never been told my performance would be tied to the sales of the office. This requirement was not in my position description, nor was it a factor on my performance evaluation. I was aware that a promotion in the Contracts Department had been approved in July for a male Contract Specialist. I was also aware that male Department Heads in the California Office were routinely promoted to the LG-15 level after one year in grade at the LG-14 level. Therefore, in August 1992 I filed an EEO complaint. However, because there were no EEO counselors at the California Office, my complaint was assigned to a counselor in the Kansas City Office.

During the EEO investigation I was informed that management fabricated new reasons for the denial of my promotion. Mr. Jones stated that a poor Program Compliance Review and Inspector General's Office investigation were sufficient grounds to deny my promotion. The facts do not support this allegation.

Program Compliance Review

A Program Compliance Review (PCR) is an annual review of each department that is conducted by Washington Office staff. The Contracts Department PCR took place in June 1992. The rating scale is compliant, substantially compliant, adequately compliant, or noncompliant. Upon completion of the review, it is customary for the leader of the review team to have an exit conference with senior management. Mr. Bert Stacey headed the review of the Contracts Department. In the June 1992 exit conference with Messrs. Felton and Jones, President and Vice President of the California Office, Mr. Stacey indicated that the Contracts Department received a "substantially compliant" rating. Mr. Stacey noted that during his review he became aware of the fact that officials outside the Contracts Department were taking inappropriate actions that ultimately impacted the Contracts Department. For example, program officials were making contractual agreements without proper authority. The Contracts Department was affected because we were forced to fix problems created by these unauthorized agreements. Mr. Stacey stated that these problems were the result of improper actions by the program areas, not the Contracts Department. He suggested that Messrs. Felton and Jones address the issues directly with the program offices and take appropriate steps to ensure that program officials stopped these unauthorized contracting activities.

In his affidavit, Mr. Jones was asked to state the specific deficiencies noted in the PCR. He responded that there had been some sole source contracting, contracts awarded and increased without following proper contracting guidelines, and inadequate oversight on some of the contracts. Mr. Jones's statement was blatantly wrong, as there were no such findings in the PCR. Contrary to his allegations of poor performance, the PCR actually supported the Contract Department's solid performance. It was the Program Offices—not Contracts—whose performance was criticized.

Inspector General's Report

The Inspector General's (IG) investigation referenced by Mr. Jones involved my former supervisor William Sylvestre, Assistant Director, Contract Management, his former supervisor Fred Douglas, Deputy Director, and David Stewart, Contract Specialist. These three men acted together to award sole source contracts without proper authority and increase fees on awarded contracts without following proper contracting guidelines. I know this for a fact because it was one of my employees who referred the issue to the IG office, and that employee and I discussed the issue in advance of reporting it. During the investigation, I was interviewed by the IG on several occasions. However, I was never the subject of the investigation, nor were

the contracts in question handled by staff in my department. Upon learning of this allegation, I called Harry Shields, IG Inspector in Charge at the California Office who confirmed that there was no negative information about me or anyone who worked for me in the report.

At the conclusion of the investigation, Mr. Sylvestre was transferred out of the Contracts Department, Mr. Douglas was transferred to Washington, DC and Mr. Stewart resigned. I understand that the IG recommended firing the individuals, but Messrs. Felton and Jones refused. Why am I to be held accountable for the covert actions of these individuals?

REPRISAL

After filing my complaint, management took actions which constituted reprisal and were apparently an attempt to intimidate me. Those actions demonstrate the California Office's blatant disregard for the EEO process. The EEO Investigator's report of my case has confirmed the following acts of reprisal.

Local Office Review

In early September 1992, Senior Management ordered another review of the Contracts Department. This review was headed by a local team. Each unnecessary review prohibits me and my staff from doing the job that we were hired to do. Although I was never given a copy of the report, I was told by my supervisor that the outcome was favorable.

Yet Another Review

Following completion of the local office review in late September, Senior Management initiated yet another review. This time they requested that the Washington PCR team return to the California Office immediately for another PCR of the Contracts Department.

A team of ten individuals, again headed by Bert Stacey, arrived in February 1993. The review lasted for one week. At the conclusion of the review, the Contracts Department received a compliant rating and the team leader noted that the California Office had one of the best Contracting Departments in the country.

No other Department, with the exception of Affordable Housing, who is also headed by a female, has been subjected to multiple reviews.

INCONSISTENT PERFORMANCE STANDARDS

In his affidavit, Mr. Robert Hughes, Director of Administration and my second line supervisor stated "Management believes that when a formal PCR shows deficiencies, then the supervisor's performance had not been entirely satisfactory and should not result in a promotion until the deficiencies have been corrected."

If this is management's policy, then such policy must be consistently applied to males and females. This did not happen in the California Office. Male managers whose departments had significant deficiencies noted in PCR's were promptly promoted, with no follow up "local reviews" or second PCR's. The EEO investigation confirmed this fact as evidenced in the following statement from the Investigator's Report:

"During the period in which deficiencies were noted in the SAMDA and REO Program Areas, the promotions to LG-15's of male Department Heads were not held pending a resolution of the deficiencies."

REWARDING ILLEGAL BEHAVIOR

The EEO investigation has concluded, and confirmed discrimination in my case. A resolution is pending. I would like to comment that the RTC's Washington Office of Equal Employment Opportunity has been very responsive to my complaint, and has made efforts to educate all managers within the organization about sexual harassment and discrimination. Until recently, I believed that management throughout the organization was making a good faith effort to eradicate the discrimination.

However, I am here today because this is not the case. The individual who denied my promotion, Mr. Phil Jones, has been recently PROMOTED to the Washington, DC office. I am outraged by the Corporation's decision to promote this individual. He not only discriminated against me, but he discriminated against another female manager in the California Office, who is also here today.

My attorney has contacted Senator Boxer's office requesting an explanation. Senator Boxer promptly requested a response from the RTC in Washington. Unofficially, the RTC has said that Mr. Jones was not the individual responsible for discrimination. If not him, then who? Two levels of management above me gave affida-

vits stating that they recommended my promotion. Next in the chain of command was Mr. Jones. He was the most senior management official who gave an affidavit during the EEO investigation. In his affidavit, he stated the reasons why my promotion had been denied. Mr. Jones was the management official who denied my promotion.

By its action, the RTC is clearly saying that its managers are not held accountable for their discriminatory actions. I find this situation untenable. I believe that RTC supports a good ol' boy network at the most senior ranks of its management which is why Mr. Jones was promoted in spite of his discriminatory activity.

Clearly RTC Management has abdicated responsibility for correcting discrimination and reprisal within the organization. I am thankful to Members of the Committee for their concern and exhort you to put an end to this heinous conduct.

STATEMENT OF J. HANS MANGELSDORF
ASSET SPECIALIST, OAM/REO, CALIFORNIA OFFICE, RTC

I would like to express my appreciation for the opportunity to meet with you. It is both an honor and a pleasure to be here. Before I begin I would like to say that the RTC is staffed with dedicated, hard working employees. I am proud to serve with them.

A pattern of mismanagement and misconduct has developed at the California office. Charges of harassment and reprisal are pervasive. RTC's own independent investigations have confirmed these allegations, however, the RTC has been real slow when taking corrective action. My supporting the EEO process through testimony to the Inspector General's Office, the EEOC and the numerous in house investigations has resulted in reprimands, written warnings and the continual denial of a promised promotion.

Voicing my opinion is part of my job description. It seems that every time I do, I suffer for it. My supervisors are hostile and I'm called a "native," meaning constructive criticism has no place at the RTC.

I'm here to discuss RTC's operations and its impact on the local marketplace—primarily commercial property in the Los Angeles, Orange and San Diego, California, counties. My comments are based on my tenure at RTC and more than 17 years in the California real-estate and savings-and-loan industries. I am the senior Asset Specialist in California's REO department.

I started with the RTC in June of 1990. Since then I have served at a dozen institutions including Columbia, Pacific, Santa Barbara, and Great American. I've read a lot of appraisals and spend a lot of time with real-estate brokers. I probably talk to 20-30 taxpayers every day.

After RTC opened its doors, out of necessity it expanded its operations to meet its obligations and goals. Since then sales have been brisk and operations have produced results. This year alone, we've already met our goals by disposing of more than 17 billion worth of loans and real-estate.

This amount represents a significant sector of the marketplace. According to local sources the RTC holds a 17 percent market share. In hind site, RTC's policy of disposing assets as rapidly as possible has achieved its goals, however with risk to local economies. With RTC's sunset at hand, it's time to consider alternatives for its remaining inventory.

For example, one avenue RTC has taken when disposing properties are auctions. Unfortunately, not only have past real-estate auctions disposed of properties using discounts but the high operating costs compared to listing property with a local broker, have reduced the return to the taxpayer while negatively impacting the market.

To be specific, a typical minimum bid for property at RTC auction is 70 percent of the appraised value; auction selling costs are reportedly 22 percent of the selling price, compared to an industry average of 17 percent. Listing with a local broker generally costs 8-10 percent of the sales price and properties are sold closer to appraised market value. In effect, through these auctions, the RTC and the American Taxpayer, pay a high cost for sales only to achieve discounted sales prices. The difference equates to millions.

Another avenue involves structured sales transactions, where the RTC values property based on its income strength. For example, using this approach, if the RTC has an 80-room hotel that sits on 5,000 prime acres, it would determine the selling price based on the income the hotel produced without consideration to the value of the land. This leads to more discounting compared to the true value of the property.

Because of the extended escrow periods, the straw buyers and the secrecy associated with this process, these transactions also take more than a year to close, compared to a more typical short-term transactions. Once again discounting property requires more attention than the typical local sales approach.

The local communities feel that RTC's continued discounting, through auctions and structured sales, are depressing an already fragile marketplace. According to local appraisers, discounting the value of real estate to enhance sales, can depress real-estate values. L.A. and San Diego are starting to look like ghost towns. It's not too late to re-engineer the sales process that the RTC is using. RTC is "Ready To Change."

The solution requires management that will support the real-estate market. Workable solutions are available. I would be happy to address any questions. . . .

STATEMENT OF THOMAS J. BURNSIDE

Failed Texas S&L's could cost the American taxpayers \$560 billion over the next forty years. Yet, after spending tens of millions of dollars, the RTC and the FDIC combined have only recovered one tenth of 1 percent of the Texas losses from the insiders and professionals for the Texas S&L's.

Stated differently, Texas S&L's could cost every man, woman, and child in the United States \$2,200 *each*. The Texas insiders and professionals that caused the problems will pay back about \$2 of that \$2,200.

WHAT HAPPENED?

Early this year, several RTC managers and I reported serious flaws in the RTC's pursuit of Texas S&L officials and professionals who presided over the gutting of an entire industry. The RTC reaction to such memos was swift and violent. Yet high level RTC documents now reveal that RTC managers concede the total breakdown of the RTC efforts to investigate the collapse of the Texas S&L industry. Only the finger pointing remains.

The top RTC lawyer in Dallas directly responsible for the investigation and pursuit of civil cases against S&L insiders recently told other high-level RTC managers:

. . . we share similar concerns raised by increasing evidence of deficiencies in the management of the investigation and pre-litigation stages of professional liability matters in the Dallas Office. . . .

It seems evident that some cogs are either worn or broken and need immediate fixing.

I really think it is imperative we inspect the soundness of the foundation now, *rather than face an autopsy of the rubble after.*"

An RTC Vice President reportedly issued a caustic response to the lawyer's blatant attempt to "wash his hands" of any blame for the collapse of the Dallas professional liability program:

"I will be the first to admit major management failures on the part of Investigations in Dallas. I am, however, distressed by the conclusions you have drawn that level charge after charge at the Investigations side of the equation while failing to find the slightest fault in your own managers.

Let me remind you of the turbulent history of Dallas PLS, *exemplified by the Tom Burnside matter*, that wrought changes in PLS management and constant turnover in line attorneys resulting in the current cadre of newly hired, inexperienced PLS attorneys.

The one-sided arguments and self-serving solutions presented in your memorandum lead me to conclude that *you and your staff need to significantly rethink your methods of operation* in order to better address the shared goals and responsibilities implicit in carrying out a productive PLS program. We will be closely monitoring this situation *until we are comfortable the Dallas PLS and Investigation staffs are back on track.*"

This memorandum outlines the "Tom Burnside matter" and, more importantly, describes the total disintegration of the civil pursuit of Texas S&L insiders and professionals.

Unfortunately, the Texas statutes of limitations on insider abuse have expired. The issue is not getting the program "back on track" but rather the recognition of a "train wreck." Or, to paraphrase the RTC lawyer in Dallas who helped cause the train wreck, this report is "an autopsy of the rubble."

I. The Texas S&L's

A. THE COSTS OF THE S&L BAILOUT

Estimates of the "cost" of the S&L bailout have varied widely. In 1988, M. Danny Wall claimed that the taxpayers would not have to pay any of the costs for failed S&L's. These cost projections have increased exponentially ever since. Surprisingly, most of these estimates "omit" the cost of interest in funding the S&L bailout.¹

A *Stanford Law & Policy Review* report, however, has calculated the interest cost of the S&L bailout as follows:

"TABLE 2.
COST OF THE THRIFT RESCUE OVER 40 YEARS: 1989-2029
(Billions of Dollars)

Year	Amount
1989-1999 Costs (from Table 1)	\$ 456.3
Non-Treasury Debt, 2000-2029	256.8
Treasury Debt, 2000-2029	638.8
Total 40 Year Cost	\$1369.9

NOTE: Calculation assumes that all costs except interest end by 1999. It excludes the interest of borrowing to pay Treasury interest (i.e., the compound effect of paying interest on interest)."

Other studies may quibble with the cost or conceal the interest component of the S&L bailout. The fact remains, however, the cost to the taxpayers—whether \$1.4 trillion or just many hundreds of billions—is incomprehensible. Even more staggering is that one state, Texas, caused the bulk of the losses.

B. THE TEXAS SHARE

The S&L debacle has resulted in the single largest transfer of wealth between states in history. Insolvent Texas S&L's account for 41.19 percent of total costs for the S&L bailout from 1986 until 1992. As one observer noted:

"No doubt the bailout has been the nation's largest financial disaster. Less well understood is that the bailout transferred enormous wealth from the Northeast-Midwest region to Texas and a few other Sunbelt states.

Yet plenty of other states suffered economically in the 1980's, but their S&L's didn't become basket cases. Texas simply dropped the regulatory reins on its state-chartered S&L's, encouraging an orgy of speculative and insupportable investment. While depositors surely must be protected, no one should overlook the fact that Texas thrifts sponsored, in essence, an economic development program for which the rest of the country must pay." Lara Thyagarajan, "Stuck with the Tab . . . Part III: The Bailout Continues *Northeast-Midwest Congressional Coalition Report*, May, 1993.

Texas' 41 percent share of the total S&L costs of \$1,369,900,000,000 is \$560 billion. On a more comprehensible level, Texas S&L's will cost every man, woman, and child in the United States \$2,200 apiece. On an even more personal level, the bailout of Texas' S&L's will cost my wife, myself, and our four children \$13,200 over the next forty years.

Texas S&L's not only led the nation in total costs, it led the nation in fraud and criminal conduct. In 1990, the Department of Justice announced that 37 percent of all criminal referrals on financial institution fraud across the United States came from Texas. The National Commission on Financial Institution Reform, Recovery and Enforcement described the Texas S&L debacle as follows:

"The situation was most out of control in Texas, which became the breeding ground for imprudent and abusive practices. The S&L's it chartered were allowed to engage in high-risk activities virtually without limit, and supervision and examination were essentially nonexistent for several years. It was no accident that over 40 percent of all taxpayer losses came from Texas S&L's." *Origins and causes of the S&L Debacle: A Blueprint for Reform, A Report to the President and Congress of the United States*, (July 1993).

¹Any homeowner readily recognizes the cost of interest in proportion to the overall "loan." Homeowners who pay \$10,000 a year on house payments find themselves paying very little principal in the early years. The Federal government penchant for "forgetting" interest is one reason why we have the deficit.

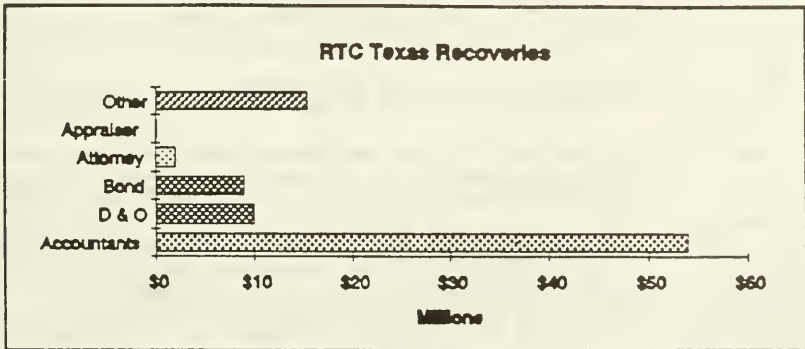
Texas should have been the focus of the RTC's efforts to pursue S&L wrongdoers. Instead, the collapse of the RTC pursuit of the insiders and professionals of failed Texas S&L's in the 1990's rivaled the same type of abuses that caused the Texas debacle in the 1980's.

II. The Collapse of the RTC Pursuit of Texas Insiders and Professionals

A. THE RECOVERY SCORECARD²

As noted above, Texas had the largest losses and the largest percentage of fraud and criminal wrongdoing in the country. Yet, almost four years after the failure of most of the Texas S&L's, the RTC has very little to show for its efforts:

- The RTC has recovered less than \$10 million from the Texas directors and officers that presided over the failure of the Texas S&L's. (4 cents of the \$2,200 Texas S&L bill for every man, woman, and child in the United States)
- The RTC has only recovered from two law firms that represented failed Texas thrifts. The \$1.7 million recovered from the law firms only slightly exceeded the RTC's cost of investigating and pursuing attorney malpractice cases. (less than one penny of the \$2,200 Texas S&L bill)
- The RTC has only recovered \$150,000 from the appraisers that gave inflated appraisals that underlay many "land flips" and other criminal conduct that allowed S&L insiders to loot the federally insured thrifts. (less than one penny of the \$2,200 Texas S&L bill for a family of ten)
- The RTC has only recovered \$15.5 million from the securities and commodities brokers and investment bankers that flocked to Texas to get quick profits at taxpayer expense. (6 cents of the \$2,200 Texas S&L bill)



- Two thirds of all RTC Texas recoveries came from two accounting firms who, while clearly culpable, may later question whether they caused 66.4 percent of the Texas losses. (21 cents of the \$2,200 Texas S&L bill)

All told, the RTC has recovered slightly more than \$90 million from its Texas Professional Liability cases. A lot of money for a private citizen! But here, the RTC was collecting the money for taxpayers faced with hundreds of billions in losses and nothing to show for the bill that will extend for the next forty years.

B. ANALYSIS OF THE SCORECARD

An analysis of the RTC scorecard in Texas actually reveals much more serious problems in Texas than meets the eye. Not only are the total recoveries shockingly low, the distribution of WHO paid the RTC is equally revealing. For example, the RTC has recovered very little from the former officers and directors of the failed S&L's. Similarly, recoveries from attorneys and appraisers are almost nonexistent.

²The RTC Texas scorecard figures come directly from the RTC Office of Investigations 1993 Semi-Annual Report as of June 30, 1993, which is attached to this statement.

TYPE OF DEFENDANT	NUMBER OF CASES	AMOUNT OF RECOVERIES
D & O	13	\$ 9,995,750
ATTORNEY	2	\$ 1,675,000
APPRAISER	1	\$ 150,000
BOND	8	\$ 9,156,500
ACCOUNTANT	5	\$53,940,000
OTHER	8	\$15,510,800
TOTAL	37	\$90,428,050

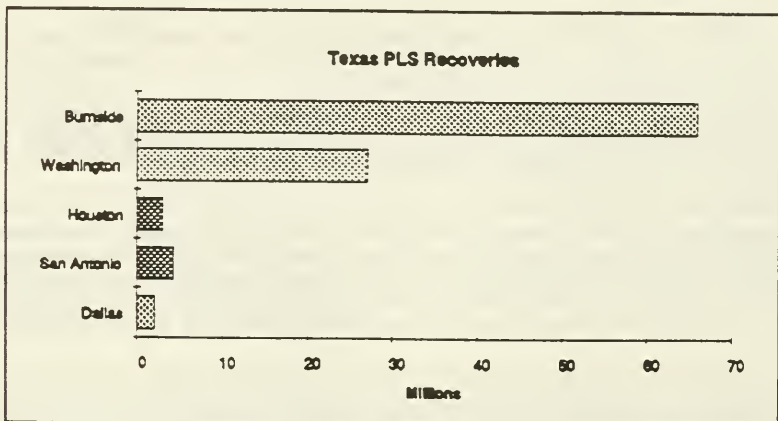
As evidenced by this hearing, the RTC often defends itself by "attacking their accusers." The following numbers preempt any RTC attempts in my case. The RTC cases under my supervision as a fine attorney for over two years per case have resulted in recoveries in excess of \$66 million dollars. The case recoveries represent:

- 73 percent of all RTC Professional Liability recoveries on failed Texas S&L's.
- 37 percent of all RTC recoveries nationwide on the global settlement with Ernst and Young.
- The second largest collective Professional Liability recovery for any RTC thrift across the country. It was second only to Charles Keating's Lincoln Savings.
- 70 percent of all RTC Director and Officer recoveries in Texas.
- The two largest RTC settlements with investment bankers who dealt with Texas S&L's.
- The largest RTC settlement with a commodities broker.
- The largest RTC or FDIC recovery from a single accounting firm attributable to a failed S&L.

When I left the RTC in March of 1993, the case recoveries on matters under my supervision for over two years exceeded the combined total recoveries of all matters supervised by the fifty plus field and regional Professional Liability attorneys throughout the country.

Do I deserve all the credit on those cases? Of course not. Indeed, I can not even take most of the credit on any single case. I'm proud to say that they were all truly "team efforts" that had truly great RTC investigators and wonderful fee counsel. I also had strong support from Washington, D.C. Professional Liability lawyers.

The following chart graphically illustrates the distribution of RTC Texas Professional Liability recoveries according to PLS attorney:



III. The Reasons for the Collapse

A. THE FAILURE TO INVESTIGATE

The key to any lawsuit is an understanding of the facts. The only way to understand the cause of the failure of a billion-dollar S&L is to interview people associated with the S&L and to obtain relevant records. Congress gave the RTC a simple, tried and true tool to interview witnesses and to investigate claims—the administrative subpoena.

Subpoenas are the RTC's most powerful tool in evaluating and pursuing Professional Liability claims. A PLS lawyer may use administrative subpoenas to obtain documents outside the control of the RTC, compel oral testimony, determine the net worth of potential defendants, and a host of other purposes. If used properly, the subpoena power permits the RTC to obtain early favorable settlements. Conversely, the failure to use subpoenas often results in making decisions with incomplete information and inferior recoveries.

The RTC boasts of 99 percent voluntary compliance with its subpoenas and has won virtually every significant challenge to its use of subpoenas. Courts have approved RTC use of subpoenas for virtually any conceivable investigatory purpose. The administrative subpoena coupled with the three-year extension of the statute of limitations gave the RTC professional liability attorney the ability to completely develop a case before even making the decision to sue.

The use of the administrative subpoenas should have been a routine component of professional liability investigations in Texas. In some parts of Texas, it was widely used. I issued over 200 subpoenas on the cases that were under my control.

The issuance of subpoenas in other cases paled in comparison. For example:

- Three RTC attorneys stationed in Houston issued only 3 subpoenas in their investigation of over 43 failed S&L's. Three subpoenas for an entire office!
- The three attorneys in the Dallas field office only issued 43 subpoenas for 37 S&L's.

In retrospect, the taxpayers will receive less than one subpoena for each billion dollars in taxpayer losses from Texas S&L's over the next forty years. Expensive subpoenas.

Numbers tell only part of the story. Without subpoenas, what did the RTC lawyers base their decisions upon? The big question in Texas was:

WHO GOT THE MONEY AND WHAT DID THEY DO WITH IT?

Without subpoenas, the RTC will simply never answer such basic questions. Indeed, the RTC never really sought the answer.

The importance of subpoenas was readily proved when I subpoenaed the accountants' workpapers for the holding company of a large failed S&L. Our review of the workpapers revealed that two officers whom we thought had marginal net worth, in fact had received eighteen million dollars over eighteen months. The S&L insiders had also concealed that income from the outside directors. That single fact dramatically increased the value of the case. Yet how many other Texas cases involved such gross self dealing that went undetected because the RTC lawyer never issued a subpoena.

In case after case, the Investigations Unit begged its lawyers to issue subpoenas. The Dallas lawyers always found excuses. The most outrageous excuse came from a Dallas Professional Liability manager who refused because "it would send the wrong message." The perplexed investigator then came to me and said: "Tom, what type of message are we trying to send by not sending out subpoenas?" Good question.

B. THE PURGE OF EXPERIENCED ATTORNEYS AND INVESTIGATORS

The RTC staffing on S&L professional liability cases in Texas doomed most of the investigations of failed Texas S&L's to failure. In three years, the Texas cases suffered through five "reorganizations" of the lawyers assigned to investigate the failures. Eventually the fourth or fifth attorney assigned to the S&L could only halfheartedly "go through the motions" of "papering the file" rather than trying to conduct a true investigation. The "numbers" tell the impact of the "reorganization" of the Texas Professional Liability office:

- Not one attorney that recommended the filing of a Professional Liability case in Texas still handles the case today.
- After the 1992 reorganization, the percentage of RTC Texas suits filed dropped from 37 percent to almost nothing.
- The use of administrative subpoenas plummeted after the reorganization. Other than subpoenas that I issued, the four Texas professional offices only issued ten

subpoenas on failed Texas S&L's in the seven months following the 1992 reorganization.

- RTC management ordered the closing offices to "box up" many files on failed S&L's until they could find some one to work on the files. Many of these cases, particularly in San Antonio, were ignored for months afterwards.

The RTC staffing of the Texas Investigations Unit was equally disruptive. In their pre-election year haste to bury the S&L debacle, RTC management announced their intention to close three of the four Investigation's offices responsible for failed Texas thrifts. Suddenly, the RTC abandoned three years of investigative work and terminated the on-site investigators who had developed the cases. The RTC then started to transfer entire warehouses of documents to Dallas. Local S&L prosecutors vigorously objected to the mass shuffling of files. Some prosecutors started to issue "blanket" grand jury subpoenas on the RTC to prevent the destruction of their cases through the mass transfer of RTC records.

The Baton Rouge story illustrates the chaos created by the reorganization. In mid-1992, the RTC announced the prospective closure of the Baton Rouge office. Many Baton Rouge Investigators found other jobs and their cases bounced among investigators until they too left the RTC. To solve the problem, RTC officials assigned Houston investigators to handle the cases. A few months later, the RTC accelerated the closing date of the Houston office and its investigators started leaving. RTC then started transferring the files to Dallas. Two weeks after the Houston office closed its doors and ripped out its computers, RTC management decided to reopen the office. Not surprisingly, many departed Houston investigators refused to return to the RTC.

The RTC has now announced another cutback of Texas investigators. Simultaneous with the cutback of line investigators, the RTC is increasing "field management" from three supervisors to ten. Soon Dallas will have "all chiefs" and "no Indians." Perhaps the RTC has its own spin on "re-inventing government."

C. FAILURE TO WORK AS A TEAM

Any professional liability case can only succeed as part of a team effort. The PLS attorneys were the "quarterback" of the team and had the ultimate responsibility to investigate failed S&L's and to file the official recommendation to sue or not. Because of this responsibility, the RTC gave the line attorney the exclusive authority to issue subpoenas and to supervise outside lawyers. The Investigations Unit provide the offensive and defensive linesmen to the team. They provide the "heart and soul" to the investigation.

Before the 1992 RTC reorganization, the Texas investigators and attorneys worked closely together. In the Spring of 1992, however, the RTC legal managers ousted the top Texas professional liability manager in a nationwide purge. The new management radically changed the relationship between the lawyers and investigators. Suddenly, the investigators were the enemy. Rather than work as a team, the Dallas lawyers began concealing information from the RTC business officials that had the responsibility to sign off on all significant professional liability decisions.

For example, when I objected to a decision that I believed would gut a Texas case that was second only to Charles Keating's Lincoln Savings, my bosses ordered me to conceal my objections from the very business officials that were relying on my legal advice. When I objected to this gag order to Washington RTC management, Arturo Vera-Rojas placed me under a second gag order that restricted such communications. When I reported my concerns to the Government Accounting Office, Arturo Vera-Rojas locked me out of the Dallas Legal Division.

IV. The Consequences of the Collapse

Poorly investigated claims result in bad decisions on both ends of the spectrum. Obviously, a failure to investigate can result in neglecting to bring meritorious suits that the RTC has a fiduciary duty to pursue. Similarly, a poor investigation severely undermines the RTC to prevail on those meritorious suits that it does file. Just as importantly, however, poor investigation can result in the filing of unjust or frivolous suits. All these problems flowed from the collapse of the Dallas PLS effort.

A. FAILING TO PURSUE VIABLE CLAIMS

The most egregious wrongdoers seldom leave a paper trail in an S&L that they know will be seized by the regulators. Rather, the truly big crooks attempt to hide their theft. Accordingly, a myopic examination of the records remaining in the gutted S&L cannot result in the big cases against those S&L officials who deliberately fashion schemes that are difficult to detect.

The only way to build a case against someone who had enough foresight to try to hide the wrongdoing was to go beyond the RTC files. For example, talking to peo-

ple who were at the S&L certainly helps the investigation. Additionally, using administrative subpoenas was essential. As discussed above, however, several offices in Texas issued few subpoenas. We will never know what happened to much of the money because the RTC lawyers refused to subpoena necessary information.

When the statutes started to expire, case after case was officially closed without any real investigation. The Texas RTC attorneys issued five or fewer subpoenas on more than 90 percent of their cases. No wonder the line attorney could honestly write; "We found no evidence that would justify the pursuit of the case."

B. PURSUIT OF POORLY INVESTIGATED CLAIMS

Just as crooks tend to hide their wrongdoing, honest (albeit, perhaps negligent or grossly negligent) S&L officials tend to leave a pretty good paper trail. Accordingly, a failure to use subpoenas will result in a disproportionate amount of claims against individuals that did not have the foresight or incentive to cover their tracks. Indeed, those individuals may themselves have been deceived by more culpable wrongdoers.

Additionally, a complete investigation coupled with frank and candid pre-suit discussions with potential defendants can result in the RTC avoiding the filing of bad lawsuits. Such pre-suit discussions rarely succeed when the RTC has done no investigation at all. Potential defendants either believe (1) that the RTC is not genuinely concerned about making a fair decision based on the facts; or (2) that the RTC is so off base that they perceive a tactical litigation benefit to fighting an unprepared RTC.³

A prominent Dallas S&L defense attorney, Schuyler Marshall, cogently expressed the desire to deal with competent, prepared RTC attorneys because:

... this leads to reasonable settlements of cases that should be settled, the opportunity for a decision not to file suits that should not be filed and an early understanding of situations where it is inevitable that suit must be filed and litigation pursued. Conversely, it is extremely frustrating (and it happens most of the time) to deal with attorneys who are not prepared, not knowledgeable on the facts, merely posturing, want a minimum of a hundred million to settle, no matter what the facts, etc. My reaction as a defense lawyer is that it is impossible to settle or even have a reasonable discussion in these situations and therefore, I simply prepare to litigate." -Schuyler Marshall letter of September 17, 1993.

Even RTC management has conceded that its decision-making process on Texas cases had serious flaws. In one major case, the Dallas lawyer failed to issue any subpoenas or to hire counsel until just months before the statute expired. On the day the statute expired, Dallas RTC lawyers presented RTC business officials with two antithetical recommendations—to sue and to close out the claim.

Understandably, senior RTC business officials were aghast. Jim Messec, the top RTC business official in Dallas reportedly questioned the Dallas attorneys: "Gentleman, what is it? Are you recommending that the RTC sue or closeout the case? It can't be both." He never received an answer. A senior Washington, DC business official apparently complained that the decision to sue was "... made more on what (could) be done in the short run as opposed to how it should have been handled."

Assistant General Counsel Arturo Vera-Rojas—the lawyer responsible for the management of the Dallas office, including the Professional Liability cases—later conceded that the case filed by the RTC suffered from "deficient preparation" and was based upon "... *totally speculative* factual averments that are *in no way supported by provable facts*..." He went further to say that: "Three years of investigation (whether or not diligent) have not produced sufficient facts to support the development of anything resembling an actionable claim." Yet Arturo Vera-Rojas was the chief lawyer in Dallas. Lawyers that reported to him had the direct responsibility to investigate the case. Only RTC lawyers had the authority to issue subpoenas. Only RTC lawyers have the authority to recommend suit. Just months before the three-year deadline expired, the Dallas lawyers had failed to issue a single subpoena to investigate the case. The Dallas legal manager that had direct line responsibility for the case only logged 40 hours in a one year period on the case. That same year, he logged almost 1,900 hours of "administrative time" supervising two other lawyers. Stated differently, the "buck stops" with the lawyers.

Was this an isolated case? Arturo Vera-Rojas later confessed that:

³I can readily understand the reluctance to negotiate with a party that appeared to make its decisions without an investigation. On the other hand, I personally disagree with this "tactical benefit" of an innocent person going into litigation with the RTC without attempting to dissuade them. Even a remote chance of persuading the RTC to drop a claim seems worth the risk of "educating" the RTC. No one wins "in litigation with the Federal government because of the expense and trauma of defending a suit."

"... reports to me have revealed many similar cases evidencing poor investigatory planning and performance."

V. Who Will Bear the Consequences?

Every one suffered from the failure of the Dallas RTC office to investigate the Texas cases.

The taxpayers were the most obvious victim of the RTC Texas debacle. They paid for the bailout of the Texas S&L industry—in exchange, they expected the RTC to make a reasonable investigation and pursuit of the wrongdoers. No one expected a 100 percent recovery from the Texas insiders and professionals.

The taxpayers did expect the RTC to at least try to find out who was responsible for the \$2,300 Texas S&L tax on every man, woman, and child in the United States.

APPENDIX A

THE MANAGEMENT ADMISSION OF COLLAPSE THE FINGER POINTING BEGINS

After all attempts to coverup the Dallas PLS collapse, RTC management now concedes the existence of the problems—they only disagree on whom to blame.

(1) *The July 26, 1993 Vera-Rojas Memo*

In a memo to RTC national management, Dallas Assistant General Counsel Arturo Vera-Rojas finally admitted that the Dallas Professional Liability program had severe management problems.

His memo of July 26, 1993 described the Dallas situation as follows:

- "... We share similar concerns raised by increasing evidence of deficiencies in the management of the investigation and pre-litigation stages of professional liability matters in the Dallas Office."
- "It seems evident that some cogs are either worn or broken and need immediate fixing. . . . I really think it is imperative we inspect the soundness of the foundation now, rather than face an autopsy of the rubble later."
- "... I cannot comprehend how any case for initiation of litigation, regardless of importance, visibility or priority, can be allowed to reach criticality with such deficient preparation. . . . *[R]eports to me have revealed many similar cases evidencing poor investigatory planning and performance.* A few examples should suffice to demonstrate the seriousness of the deficiencies."
- "... When an investigation is carefully planned and directed by the lawyer who is ultimately to fashion the culpability or liability theories, excellent results can be obtained with great efficiency and minimal cost. *Lamentably, that has not been the case with PLS investigations in Dallas RTC.*"
- "... I can and will ensure that investigational deficiencies not be the cause of repeated poor preparation of PLS cases assigned to my office."

Arturo Vera-Rojas' July 26 memo then tried to shift the blame for his own mismanagement to high-level RTC managers who designed the system:

- "... [T]he severability of reporting lines [of PLS and Investigations] has (not surprisingly) caused lack of proper planning and coordination. In my opinion, chaos is inevitable when responsibility and accountability are not clearly defined. . . ."
- "Investigations has been assigned multiple and sometimes unreconcilable responsibilities while being given woefully inadequate resources."
- "Investigations has suffered from conflicting statements of corporate priorities. Then political imperatives have caused said conflicting priorities to weigh in favor of support for criminal investigations at the detracton of PLS-civil investigations."
- "[T]here has been an incomprehensible bias on the part of the RTC Investigators against using the contracting process to supplement their meager in-house resources."

(2) *The August 17, 1993 Response*

RTC Vice-President of Operations Edward D. Maheney issued a blistering response to the charges of AGC Vera-Rojas on August 17, 1993. As with the Vera-Rojas' memo, Mr. Maheney conceded the existence of severe problems with the Dallas PLS program with the following descriptions of the Dallas PLS situation:

- "... Apparent deficiencies in the management of PLS claims and investigations in Dallas which came to light when decisionmakers were confronted with poorly documented and incompletely reasoned recommendations to either close or authorize litigation . . . on the day the statute was to run."

- "... What appears to be a major failure to communicate and cooperate to achieve corporate goals."
- "... Major management failures on the part of Investigations in Dallas."
- "... Seeming inability of Dallas lawyers and investigators to communicate and do their jobs. . . ."
- "... The turbulent history of Dallas PLS, exemplified by the Tom Burnside matter, that wrought changes in PLS management and constant turnover in line attorneys resulting in the current cadre of newly hired, inexperienced PLS attorneys."
- "... Managers in both PLS and Investigations failed to direct and motivate their subordinates to work together."
- "We will be closely monitoring this situation until we are comfortable the Dallas PLS and Investigation staffs are back on track."

RTC Vice-President Maheney admirably distributed the blame for the collapse of the Dallas PLS program throughout the RTC:

- "Let me remind you of the turbulent history of Dallas PLS, exemplified by the Tom Burnside matter, that wrought changes in PLS management and constant turnover in line attorneys resulting in the current cadre of newly hired, inexperienced PLS attorneys."
- "To my way of thinking, our current problem arose because managers in both PLS and Investigations failed to direct and motivate their subordinates to work together."
- "The one-sided arguments and self-serving solutions presented in your memorandum lead me to conclude that you and your staff need to significantly rethink your methods of operation in order to better address the shared goals and responsibilities implicit in carrying out a productive PLS program."



RESOLUTION TRUST CORPORATION

*Resolving The Crisis
Restoring The Confidence*

March 23, 1993

Thomas Hindes
Assistant General Counsel
Professional Liability Section
RESOLUTION TRUST CORPORATION
1717 H Street, 10th Floor
Washington, D.C. 20006

Re: Resignation in Protest

Dear Tom:

For the reasons set forth in my memoranda of March 18, 1993 and March 3, 1993, I do not believe that I can work effectively for the Resolution Trust Corporation any longer. Accordingly, I hereby submit my resignation from the RTC as of April 4, 1993 (or at some other mutually acceptable date.)

I attach the memoranda of March 18 and 3 as an integral part of this resignation letter and strongly urge you to look into this matter further. As we discussed, I would like to have an exit interview with you in Washington to explain more fully my views on the situation down here and the reasons for my resignation in protest. Please advise me of a convenient time for such exit interview.

I look forward to our meeting.

Sincerely yours,

Thomas G. Burnside

Thomas G. Burnside

Enclosure

cc: William DePugh (with enclosures)
Diane Mendoza "
Chris Jones "
Mark Gabrellian "
Arturo Vera-Rojas "
David Stockwell "
D. Rex Taylor "
Mark Greenwald "
Bruce Pederson "
Thomas Bambrick "
Wayne Fogle "
John Adair "
Edward Stephenson "

Memorandum to: James R. Dudine
Director
Office of Investigations

and

Thomas Hinder
Assistant General Counsel
Professional Liability Section

From: Thomas J. Burnside
Senior Attorney (PLS) *TJB*
RTC Dallas Office

Date: March 18, 1993

Re: Dallas PLS Problems

I. EXECUTIVE SUMMARY

Why did some PLS investigations in Texas succeed and others fail?

This memorandum seeks to explain some of the reasons underlying the success and failure of PLS investigations in Texas by analyzing the impact of the 1992 RTC Reorganization on the ultimate recoveries from Texas PLS cases. In particular, the 1992 Reorganization had the following consequences:

- ♦ The closing of five offices which contributed to a mass exodus of experienced PLS attorneys and corresponding decline in PLS recoveries as files were transferred to inexperienced attorneys;
- ♦ The ouster of a successful PLS manager who had implemented a proven "Team approach" to PLS cases which has resulted in recoveries and settlement offers in excess of \$70 million dollars. Such approach involved working closely with the Investigations Unit, aggressively using subpoenas, developing novel legal theories, and early retention of high calibre fee counsel;

- ♦ The promotion of a subordinate PLS manager who advocated an "ostrich approach" to PLS claims that has resulted in numerous "close-outs", and only \$ 2.2 million in recoveries. Such approach involved ignoring the Investigations Unit, failing to use subpoenas, resisting any new ideas, and a reluctance to expend legal fees during the investigation of PLS claims;
- ♦ A reduction in the use of administrative subpoenas, a key tool available to the RTC in developing successful PLS claims and obtaining favorable pre-suit settlements;
- ♦ An almost total elimination of any substantive supervision by first-line PLS management in Dallas;
- ♦ The rigid implementation of a "rate schedule" that recklessly disregarded the consequences of turnover of experienced PLS fee counsel at the very time that the 1992 Reorganization caused massive turnover in PLS and the Investigations Unit.

While this memo discusses only the consequences of the 1992 Reorganization on the Texas PLS cases over the last eight months, the long term impact of the current practices of the Dallas PLS management could result in the collapse of any effective pursuit of PLS claims involving Texas, Mississippi, and Louisiana institutions. On the positive side, however, the immediate implementation of remedial measures could reverse the collapse and salvage the Dallas PLS program.

II. THE IMPACT OF PLS REORGANIZATIONS

A. THE MULTIPLE PLS REORGANIZATIONS

The Texas PLS offices have undergone four major reorganizations since the formation of the RTC. In 1989, all Texas PLS cases were handled out of Washington. In January of 1990, many of the Texas PLS cases were transferred down to a newly formed Southwest Regional PLS office led by Counsel (Section Chief) Sharon Howard, who reported directly to Washington PLS. It was the only PLS office outside of Washington and was staffed with five line attorneys.

When the RTC established Regional and Field PLS offices throughout the country in April, 1991, the Southwest Regional office was partially dismantled in order to form a smaller Regional Office in Dallas and three field offices located in San Antonio, Houston, and Dallas. Sharon Howard and I remained in the Regional Office and Rex Taylor was appointed the Counsel for

the "Metrexplex" ("MCO") office in Dallas. In that capacity, he reported to Sharon Howard and directly supervised two attorneys who transferred from the old Regional PLS office.

As a result of the Reorganization in the Spring of 1992, all four offices of the old Southwest Region and the former Central Region office in Baton Rouge were collapsed into a single office. Sharon Howard was ousted as Section Chief and replaced by Rex Taylor. Of the original 15 PLS attorneys hired in April of 1991 to handle PLS cases in Texas, Mississippi, and Louisiana, only four remain. Of those four, I am the only attorney who works exclusively and directly on PLS cases.

Under the Winter of 1993 reorganization, the Dallas office will be staffed with three managers (who survived the previous reorganizations) and between nine to twelve staff attorneys. Of those staff attorneys, one has been with PLS for almost two years; two have been with PLS for approximately eight months; and one has been with PLS for just a few months. The other five to eight attorneys have not yet reported for duty.

B. THE IMPACT OF THE REORGANIZATIONS

Because of the complexity and extended investigation period for PLS claims, a change of PLS attorneys almost inevitably leads to some disruption on the file. Each file must be "re-learned" by the new attorney while precious time elapses. Many times, the transfer of the file results in losing much of the intangible "institutional memory" on the file or in shifts in strategy in the pursuit of the case. Additionally, a case that may once have been cost-effective under the original line attorney (who, for example, may have planned to internalize some of the work) can lose its cost-effectiveness upon transfer. Further, the new PLS attorney receiving the transferred case often has little or no PLS experience or is already overburdened with his or her own caseload. The problem becomes greatly exacerbated when the Investigations Unit also suffers turnover on the same file because of the same reorganization.¹

The impact of the turnover of attorneys on results of cases is dramatic. Those Texas, Mississippi, and Louisiana cases that have been handled with minimal or no turnover of PLS attorneys in 1992 have resulted in recoveries of \$ 69 million or 98.8% of all

¹ The Dallas Investigations Unit is undergoing a reorganization of its own, albeit the reorganization has been far less abrupt. The San Antonio Investigations office recently closed, and the Baton Rouge and Houston offices are slated to close soon. Accordingly, cases from those offices will suffer turnover on both the Investigations and PLS side.

PLS recoveries made in 1992 and 1993 from those states. Those cases that experienced turnover of the PLS attorney in 1992 have recovered less than \$1 million or 1.2% of recoveries from those states.

III. THE "TEAM APPROACH" TO PLS CASES

The reorganization resulted in more than a "mere" turnover in PLS line attorneys; it has resulted in a complete change in management philosophy from the "team approach" followed by the former Regional PLS office to the "ostrich approach" used by Rex Taylor during his tenure as PLS Section Chief of the Metroplex Office. The impact of this change in management philosophies of the results on PLS cases is just beginning to be felt.

A. THE DALLAS REGIONAL OFFICE "TEAM APPROACH"

A successful PLS investigation usually involves a tightly coordinated effort by a team comprised of representatives of the Investigations Unit, the Professional Liability Section, fee counsel, and outside consultants. The Investigations Unit provides the most internal RTC resources for the investigation through its line Investigators, Accountant Liability Investigator, documents control, asset-search capability, and other functions. The PLS line attorney provides legal insight and focus to the investigation and often serves as the "quarterback" of the team. Additionally, the PLS attorney has the ability to hire fee-counsel or other experts to assist in the investigation as well the power to issue administrative subpoenas. The outside fee-counsel and experts often supplement the internal resources of the RTC in pursuing PLS claims.

The Southwest Regional Office PLS personnel from the Counsel (Section Chief) to the support staff subscribed fully to the team approach whether it applied to work on individual cases or to internal office management. Every member of a team working on a particular case took pride in working toward a common goal and willingly contributed to the overall project.

While most of the Regional projects involved my cases, one high profile region-wide case was handled directly by Section Chief Howard with substantial support from our paralegal and secretary and client representatives. In that case, the RTC seized control of a corporation owned by multiple thrifts and commenced liquidation of the corporation and distribution of the assets to the RTC thrifts that owned stock in the corporation. The RTC recovered 3.3 million dollars from the case with minimal outside legal fees. Unfortunately, the ouster of Ms. Howard has resulted in the case languishing while money is still to be recovered and

the potential for RTC liability if the corporation is not properly dissolved.

B. RESULTS OF THE REGIONAL "TEAM APPROACH"

The importance of teamwork and continuity, including strong involvement by the PLS line attorney at the investigative stage, is best exemplified by the results of cases in which I served as the PLS member of the RTC team for over two years. The following table segregates actual recoveries on cases directed by (1) PLS attorneys from Washington; or (2) PLS attorneys from the PLS regional or field offices:

NEW "CFO" Designation ¹	DC Case	Field Case	Total
ATL	\$63.6	\$12.7	\$76.3
DAL-w/o Burnside	12.4	11.6	24.0
Burnside	---	59.1	59.1
DEN	4.4	10.8	15.3
KAN	15.9	16.0	31.9
NEW	124.8	----	124.8
VAL	1.0	1.8	2.8
Totals	222.1	112.0	334.3

While I take great pride in my role in the recoveries on the cases that I handled, I was only one member of the various teams that worked together closely in order to achieve the RTC success. In each case, the Investigations Unit assigned multiple investigators to the project who, in most cases, worked on the case for over two years. Additionally, the fee-counsel in each case were extraordinarily able and experienced. Finally, I worked closely with various PLS attorneys in Washington during the final stages of each case.

That such teamwork paid off for the RTC is exemplified by the

¹ This table was prepared from information obtained from the PLS case tracking database which usually identifies the source of recoveries by the Investigations' Office handling the case rather than the PLS office responsible for the institution. Accordingly, I adjusted the Washington versus Field Office figures according to the location of the PLS line attorney assigned to the institution.

recoveries for just three matters:

- ♦ The three matters account for over 50% of all RTC PLS recoveries on cases supervised by the seventeen PLS regional or field offices throughout the country.
- ♦ The cases presently account for almost 20% of all RTC PLS recoveries nationally, and the RTC is considering an additional \$8.6 million in settlement offers on the same cases.
- ♦ The cases account for over 50% of all RTC PLS recoveries from institutions with total assets under one billion dollars.

III. THE "OSTRICH APPROACH" TO PLS CASES

A. THE MCO APPROACH

The Dallas Metroplex ("MCO") PLS unit³ under Section Chief Rex Taylor adopted an "ostrich approach" that sought ways to avoid the development or pursuit of claims. In order to justify the closing-out of cases in which it was stated that there was a "lack of evidence" of net worth or merit, the MCO PLS attorneys used a combination of the following techniques:

- ♦ They waited for the cases to be delivered to them on a "silver-platter" rather than working as part of a team in the investigation stage. Instead of working side-by-side with the Investigations Unit, the MCO PLS attorneys relied upon E-mail directives designed to shift, as much as possible, the responsibility for the PLS investigation of an institution to the line investigator. Under this method, it was not "the fault of PLS"⁴ if a potentially viable claim was not sufficiently developed when the limitations period expired.

³ The MCO PLS and MCO Investigations Unit do not overlap completely on their cases. The MCO PLS unit continued to handle some Houston and San Antonio cases, and the MCO Investigations Unit worked on several cases that were not handled by MCO PLS.

⁴ This attitude ignored the fact that the ultimate responsibility for the recommendation to sue or close-out a case squarely rested with the PLS office charged with responsibility for the institution. It also ignored the tools, such as the ability to issue subpoenas or hire fee counsel, available to the line attorney that were not available to the Investigations Unit.

- ♦ The PLS attorneys under Taylor seldom hired fee-counsel without a specific order to hire counsel on a case. In one case, Rex Taylor waited for over a year and a half to hire counsel on a multi-billion dollar institution when projected losses were in excess of one billion dollars.
- ♦ As noted below, MCO PLS attorneys seldom used their subpoena power. They closed out 130 claims without ever issuing a subpoena on the institution. Indeed, during 1992, the MCO attorneys only obtained four Orders of Investigation for all of their institutions.
- ♦ The MCO PLS attorneys relied almost exclusively upon preliminary and limited asset searches and upon institution records in order to opine that potential defendants did not have sufficient net worth to make a case cost-effective. They failed to pursue aggressively other avenues to determine net worth (such as interviews or use of subpoenas) that may have revealed income or non-real estate assets.
- ♦ The MCO PLS attorneys were loathe to pursue aggressively "deep-pockets" who had the resources to fight vigorously against the RTC. The MCO PLS attorneys only "recommended" one suit against a "Big Six" accounting firm. In fact, they even tried to close out that claim, but the client refused to acquiesce. As Rex Taylor noted in closing out one potentially viable accounting claim, "Big Six firms take a scorched-earth policy." Similarly, the MCO attorneys have yet to file a single successful attorney malpractice claim, nor have they initiated any claims against securities brokers. Such fear of risk in pursuing deep-pocket defendants eliminated any potential to achieve significant, cost-effective recoveries on the MCO PLS cases.
- ♦ The MCO PLS attorneys refused to consider imaginative or novel legal theories in pursuing claims. Indeed, Rex Taylor severely criticized the legal theories underlying the recoveries in two institutions and, in his opinion, the mere investigation of such claims (which have resulted in over \$60 million in cash recoveries for the RTC) seemed to be "... in violation of the laws controlling how RTC money may be spent." Similarly, the MCO PLS attorneys led by Taylor actively resisted a consolidated investigation of a securities broker which ultimately resulted in a \$6 million dollar settlement for the RTC and FDIC.
- ♦ Rex Taylor seldom worked on those institutions assigned

directly to him. For example, he only worked 40 hours over an entire year on a multi-billion dollar thrift.

B. THE RESULTS OF THE MCO APPROACH

The gross "numbers" underlying the performance of the MCO PLS attorneys reveal the "results" of the MCO "ostrich approach". At various times, the MCO attorneys had responsibility for 42 thrifts totalling over \$10.7 billion in assets and almost \$5 billion in projected losses to the RTC. In addition, the MCO office was the oldest PLS field office in the country and was staffed by attorneys who each had more than a year's experience as a PLS attorney (often on the very cases they were assigned when the MCO office was formed) prior to the staffing of the office.

The following table contrasts the "opportunity" for recoveries for each Texas PLS office with actual recoveries:

OFFICE	TOTAL ASSETS	RECOVERIES
Regional	\$2.5 billion	\$59.7 million
Metroplex	\$10.7 billion	\$2.2 million
San Antonio	\$8.2 billion	\$4.4 million
Houston	\$4.8 billion	\$3.6 million
TOTAL	\$26.2 billion	\$69.9 million

By all objective criteria, the office should have out-performed all other PLS field offices. Instead, the office under Rex Taylor resulted in net losses to the RTC and almost no successful PLS results.

IV. THE USE OF SUBPOENAS: A COMPARATIVE ANALYSIS

The contrast between the "team" and "ostrich" approach perhaps is illustrated best by contrasting the usage of the RTC's administrative subpoena power by the respective offices.

Subpoenas may well be a PLS attorney's single most powerful tool in evaluating and pursuing professional liability claims. A PLS attorney may use administrative subpoenas to obtain documents

outside the control of the RTC, compel oral testimony, determine the net worth of potential defendants, and a host of other purposes. If used properly, the subpoena power permits the RTC to obtain early favorable settlements. Conversely, the failure to use subpoenas often results in making decisions with incomplete information and inferior recoveries.

A. THE REGIONAL APPROACH: AGGRESSIVE USE OF SUBPOENAS

In order to obtain early settlements on PLS claims, the RTC must convince the potential defendants that the RTC is prepared to proceed with a well-prepared, meritorious case and that the RTC has the advantage in litigation. Aggressive use of administrative subpoenas gives the RTC an enormous advantage since the RTC can fully prepare its case prior to filing suit and outside the presence of the potential defendants.

During calendar year 1992, the Dallas Regional office issued approximately 180 subpoenas. The following table illustrates the relationship between the aggressive use of subpoenas and early settlements on the cases:

INSTITUT.	SUBPOENA	RESULTS
B 1	100	Investment bankers settled for \$7.5 million cash within days of filing suit
"	"	Accountants settled for \$3.55 million in a global settlement prior to suit
"	"	Two directors settled for \$1.15 million prior to suit; a third director settled for \$300,000 prior to discovery
B 2	35	Five directors offered \$7.3 million to settle prior to suit
"	"	Accountants claim allocated \$43.69 million in global settlement prior to suit
Global Securit.	10	Securities broker paid \$6 million to settle multiple claims
TOTAL	135	\$64.94 million

In each of the above cases, we developed the cases thoroughly prior to settlement discussions. Accordingly, we could set

early, informed settlement goals with confidence and could effectively convince the defendants that the RTC was fully prepared to litigate if the cases did not settle. Stated differently, the RTC's head-start in the pre-trial investigation gave the RTC an incredible advantage at the negotiation table.

B. THE MCO APPROACH: THE "LOADED GUN" PHILOSOPHY

Conversely, the failure of the old Metroplex CFO to properly use their administrative subpoena power prior to filing suit contributed to their inability to obtain many significant early settlements. The three attorneys in the Metroplex CFO only obtained four Orders of Investigation and issued only 53 subpoenas for 42 institutions with over \$10.7 billion in total assets during the entire tenure of the MCO PLS program from April 1991 until June 1992. Stated differently, MCO PLS attorneys issued only 53 subpoenas even though they were investigating thrifts with projected losses approaching \$5 billion. Those figures translate to only ten subpoenas per billion dollars in losses to the American taxpayer! To date, the cases handled by the MCO PLS attorneys account for only 4% of the recoveries in the Southwest Region.

One MCO PLS attorney who has been promoted to PLS management in Dallas justified his reluctance to use subpoenas because they were "intrusive" and sought information about net worth, which is "....a very private and confidential matter." He opined that the use of RTC subpoenas are ".... best used wisely and sparingly, just as a police officer (hopefully) uses his pistol only when necessary."

The impact of the failure to use subpoenas is even more striking when placed in the context of individual cases. MCO PLS attorneys have formally recommended suit on the following cases without using their subpoena power:

Type of Claim	Subpoenas	Results
Atty	0	Summary Judgement against RTC; appeal withdrawn because RTC later concluded that the law firm had done nothing wrong.
D&O	0	Settlement at less than RTC costs
atty #1	0	MCO ATS memo rejected within RTC

atty # 2	0	MCO ATS memo rejected pending further investigation under tolling agreement
D&O	0	Suit pending; no known net worth of any defendant
Accountant	0	\$850,000 settlement as .7% of global settlement with RTC
Bond	15	Suit filed; subsequent fee counsel projected 10% probability of success a month before suit; proposed settlement for less than the RTC's attorney fees
D&O	0	Strong criticism regarding poor state of preparation of case prior to suit
attorney	0	MCO ATS memo rejected pending further investigation under tolling agreement
accountant	1	MCO ATS memo pending; projected probability of success is between 2% and 4%
D&O	0	Settlement on eve of trial at less than 2 to 1 recovery ratio
D&O	0	Pending suit
accountant	2	Suit filed; no settlement offers
TOTALS	18	RTC costs exceed settlement recoveries to date

After the 1992 Reorganization, Washington PLS started to obtain strong judicial support for the use of administrative subpoenas and actively encouraged the PLS line attorneys to use the RTC subpoena power aggressively. Indeed, Washington PLS issued a comprehensive handbook and gave an oral presentation concerning the use of subpoenas to each of the PLS field offices. Accordingly, the use of administrative subpoenas should have dramatically increased. In fact, however, the usage not only failed to rise, it actually dropped in cases handled by the Dallas Office. Excluding my subpoenas, the Reorganized Dallas Office issued only 73 subpoenas over an eight-month period for all the institutions in Texas, Louisiana, and Mississippi.

V. INTERNAL SUPERVISION OF DALLAS PLS BY REX TAYLOR

The 1992 Reorganization also impacted the amount of substantive supervision of PLS line attorneys handling cases in Texas, Mississippi, and Louisiana. The PLS Section Chiefs of San Antonio, Houston, Baton Rouge, and the Dallas Regional office all came from private practice and were very actively involved in the development of the cases under their first-line supervision. Conversely, Section Chief Taylor virtually abdicated his substantive responsibilities. In cases inherited by Rex Taylor, the RTC was not harmed by this approach. However, in cases supervised by Rex Taylor for two years, this approach has undermined the PLS program.

A. THE INHERITED CASES

As noted above, the RTC reorganization collapsed the Dallas Regional Office and the Baton Rouge, Houston, and San Antonio field offices into the new Dallas Office PLS Section under the supervision of Rex Taylor. To the extent those cases "inherited" by Rex Taylor were well developed or the line attorneys were self-sufficient, the Rex Taylor management style generally did not affect the cases.⁵

The following table illustrates the almost complete lack of substantive input that I received from Rex Taylor during my tenure as a Senior Attorney under his direct supervision from June 1, 1992 until the present.

DATE	TYPE OF MEMO	TAYLOR INPUT
6/9/92	ATSettle with Investment Banker for \$2.5 million cash	none
6/9/92	ATSue inside director	none

⁵ The occasional input from Section Chief Taylor generally sought to discourage the pursuit of the claims. For example, Section Chief Taylor questioned whether some of the larger Regional cases should have even been investigated by the RTC. The subsequent success of the questioned claims (with recoveries of almost \$60 million) silenced his early criticism.

DATE	TYPE OF MEMO	TAYLOR INPUT
6/26/92	ATSettle with insider director for one million in cash and a note	none
7/21/92	ATSue directors, officers, borrowers and attorneys	minor substantive
9/11/92	ATSettle with inside director	none
9/17/92	ATSettle with Investment Banker for \$5 million cash	none
10/2/92	ATSue attorneys	none
11/5/92	ATSue accountants	minor proofreading
11/16/92	ATSettle with accountants for \$200,000	none
11/16/92	ATSue attorneys	none
11/23/92	ATSue attorneys	none
11/23/92	ATSettle global securities claim	none
11/27/92	ATSeek Asset Freeze	none
12/7/92	ATDrop claims against D&O's	none
12/7/92	ATDrop count against D&O	none
1/11/93	ATSettle bond claim for \$135,000	none
3/9/93	ATSettle with inside director for \$300,000	none

The "none" under the category entitled "Taylor Input" includes both oral and written input either before or after the submission of the memo. Indeed, it was not unusual for Rex Taylor to be unaware that I was even working on a memo until I formally submitted it to him for transmission to his superiors and the client. I submitted an ATSue memo seeking to bring a \$30 million fraud claim against a law firm and 40 of its partners ; Rex Taylor's only response was "Is this your institution?" Within a few weeks, I had my first and only case review with Rex Taylor during which time I identified my cases and their status.

Substantive conversations between Rex Taylor and myself never exceeded two hours per quarter, and it was not unusual for us to have no substantive discussions for a month or two. Written substantive comments from Rex Taylor were equally sparse.

B. THE MCO CASES

If the Metroplex PLS cases under the supervision of Section Chief Taylor for the last two years are any example, the future results of the cases under the reorganized Dallas Office led by Taylor will fall well short of realistic potential recoveries.

The results of the PLS cases under Rex Taylor's first-line supervisory responsibility for almost two years suggest an almost complete abdication of his substantive duties as a PLS supervisor:

- ♦ The MCO cases resulted in recoveries of approximately two million (or 3% of all recoveries on Texas RTC thrifts) at a cost in excess of \$ 2 million.
- ♦ The MCO PLS attorneys only filed seven lawsuits of which three will not even recover the RTC attorney fees and a fourth may not recover the fees. The actual or projected "value" of the remaining three suits is less than \$2.5 million, assuming the original projections are accurate.
- ♦ Three MCO/PLS attorney malpractice cases have been under tolling agreements for over nine months and the defendants have yet to offer any money to settle the claims. In fact, I just recommended that the RTC drop one of the claims because we cannot prove liability, causation or damages.
- ♦ The three MCO PLS attorneys have issued, on average, just slightly over one subpoena per institution under their direction.

VII. THE DALLAS FEE COUNSEL PROBLEM

The proponents of the 1992 Reorganization argued that any transition problems from the reorganization could be compensated for through the use of experienced PLS fee-counsel. While such argument ignored the need for the RTC to internalize the

supervision of fee counsel, the argument at least recognized that experienced fee-counsel is a key member of the PLS team on any significant matter.

Unfortunately, the 1992 Reorganization has also resulted in turnover in the outside fee-counsel that were supposed to compensate for the turnover of PLS and Investigations.

Locating a sufficient number of competent fee-counsel to handle PLS cases in Texas has always been a problem because of the extent of the thrift crisis in Texas. Many of the large firms have conflicts with the RTC or FDIC because they represented failed financial institutions and are themselves actual or potential targets of PLS suits. Other firms simply do not have the experience or capacity to handle the cases. Still other firms have elected not to represent the RTC.

The fee counsel problem has been exacerbated by a recent "rate schedule" policy that the Dallas Legal Division began imposing several months ago. Under the "rate schedule" policy, the RTC Legal Division has given law firms the ultimatum to either agree to the RTC's approved rates (from Senior Partner to junior paralegal) or else they cannot do RTC work. Like many policies, the original intent of the "rate schedule" policy was commendable. It did result in an overall reduction in the hourly rates paid by the RTC for legal services. Unfortunately, the rigid implementation of the policy will have an adverse impact on the major PLS cases.

Fee counsel are not fungible commodities. Some counsel have the ability to handle large volume foreclosures cheaply while others can handle large PLS cases. While the RTC needs each type of counsel, it is much harder to find experienced, qualified fee-counsel that have the "intangible" qualities that distinguish between those attorneys that merely "go through the motions" of handling a PLS case and those attorneys who can actually produce results on the high profile PLS matters.

The application of the rigid Dallas rate schedule to PLS cases, without any consideration of the particular case, law firm, or potential recovery, ignores the policy considerations underlying the pursuit of PLS cases.

The recent controversy described in my Grievance highlights the problem. In that case, AGC Vera-Rojas wanted to fire fee-counsel if they did not agree to the rate schedule, even though the termination would harm the case as well as cost the RTC money. Additionally, I was: (1) told that the termination of my PLS counsel was not my concern; (2) reprimanded for even bringing the PLS issues to the attention of the management of the Dallas Legal Division; (3) told to conceal information from my client; and (4) cut-off from communication with PLS management in Washington.

While I will not restate my Grievance here, the facts supporting the Grievance illustrate the problems caused by the 1992 Reorganization. The controversy over my fee-counsel was not an internal balancing of competing policies or a free and open discussion of what was best for the RTC. Rather, the Dallas decision-makers simply did not care to hear about the impact of their decision on a major PLS case. Further, Arturo Vera-Rojas and Rex Taylor went to extraordinary measures to prevent me from even talking to the RTC employees who did care about the PLS case.

While the RTC "dodged-the-bullet" on the above case, the systemic problem remained. On some major cases, the RTC needs to be willing to pay a little more per hour than the rate schedule allows in order to get the best results possible for major PLS matters. These cases are not the same as foreclosures or routine litigation and deserve proper attention. To paraphrase an old adage: sometimes the RTC needs to be willing to "spend money to make money." The results of the RTC cases illustrate the point ---- almost 90% of the PLS recoveries in Texas were from cases handled by fee-counsel whose rates exceeded the Dallas rate schedule.

A second systemic problem illustrated by the fee-counsel controversy was the callous disregard of PLS concerns by the Dallas Legal Division. It was not simply a case where Dallas management listened to all sides and made an informed decision. In fact, they refused to even discuss the concerns of PLS and imposed two "gag" orders. Such disregard permeates the Dallas PLS program and was the very danger that the original structure of PLS reporting directly to Washington sought to avoid.

VI. CONCLUSION

The Dallas PLS program is in serious trouble.

It has lost most of its experienced attorneys and lacks any management "vision" that will promote PLS recoveries. Indeed, the failure to use subpoenas, lack of first line PLS supervision, termination of fee-counsel, issuance of gag orders, and the current "ostrich approach" indicate a virtual collapse of the Dallas PLS program.

Some of the problems caused by the 1992 reorganization are irreversible. Yet, some cases can still be salvaged if remedial measures are activated immediately. The first step is to immediately investigate some of the concerns raised in this memorandum and my Grievance.

cc: Edward H. Stephenson, Jr. Assistant Director Government Accounting Office	Arturo Vera-Rojas General Counsel RTC-Dallas Office
John Adair RTC Inspector General	David Stockwell Senior Counsel Litigation RTC-Dallas Office
Edward Maheney Assistant Director- Conservatorship Operations	D. Rex Taylor Counsel (Section Chief) Professional Liability Section RTC-Dallas Office
William DePugh Managing Investigator RTC-Dallas Office	Bruce Pederson Counsel RTC-Denver Office
Diane Mendoza Assistant Director- Investigations RTC-Dallas Office	
Chris Jones Assistant Director- Investigations RTC-Dallas Office	

**STEP ONE REBUTTAL AND STEP TWO APPEAL OF GRIEVANCE
AGAINST ASSISTANT GENERAL COUNSEL ARTURO VERA-ROJAS
AND PROFESSIONAL LIABILITY SECTION CHIEF D. REY TAYLOR
DALLAS LEGAL DIVISION-RESOLUTION TRUST CORPORATION**

GRIEVANCE APPEAL FROM

THOMAS J. BURNSIDE
PLS SENIOR ATTORNEY
RTC DALLAS LEGAL DIVISION

MARCH 3, 1993

INTRODUCTION

The attached materials describe wrongful conduct of Assistant General Counsel Arturo Vera-Rojas and Section Chief (PLS) Rex Taylor that is detrimental to the Resolution Trust Corporation and which form the basis of my formal grievance. The conduct included:

- ♦ A gag order intended to conceal material information from the RTC client representatives charged with making decisions on a matter under my supervision
- ♦ A second gag order intended to prevent a PLS attorney from freely communicating with PLS management in Washington
- ♦ Personal attacks on a PLS line attorney whose cases account for almost \$60 million in cash recoveries for the RTC
- ♦ Discrimination against a minority-owned law firm
- ♦ Actions taken in reckless disregard of the consequences to a PLS case that is second only to Charles Keating's Lincoln Savings in total RTC PLS recoveries
- ♦ Making a mockery of the FDIC Grievance Procedure by attempting to appoint the immediate subordinate and personal friend of Arturo Vera-Rojas as the Step Two reviewer of the grievance against Messrs. Vera-Rojas and Taylor

The attached memoranda seek "full, impartial, and prompt consideration" of my grievance within the prescribed 15 day period. Additionally, the materials inform you of improper conduct of RTC employees under your supervision.

Memorandum to: John Lomax
Vice President
RTC-Dallas Office

E. Glion Curtis
Acting VP & Associate General Counsel
(Corporate Affairs)
Washington, D.C.

From: Thomas J. Burnside
Senior Attorney (PLS)
Dallas, Texas

TJB

Date: March 3, 1993

Re: Step One Rebuttal and Step Two Appeal
of the February 5 Grievance against
AGC Vera-Rojas and Section Chief Taylor

and

Report of Improper Conduct by RTC
Employees under your Supervision

I. EXECUTIVE SUMMARY

This memorandum fulfills the dual purpose of: (i) advising you of improper conduct within the Dallas Legal Division; and (ii) obtaining a "Step Two" review of my grievance against Assistant General Counsel Arturo Vera-Rojas and Section Chief D. Rex Taylor. I understand that you jointly have direct supervisory responsibilities over the Dallas Legal Division and therefore have a direct interest in this matter.

On February 5, I presented a formal grievance against AGC Vera-Rojas and Section Chief Taylor of the Dallas Legal Division. Among other things, the grievance objected to two "gag orders" imposed on me after I protested conduct that I believed: (i) impaired the probability of success and the cost-effectiveness of a major PLS case; and (ii) explicitly discriminated against a minority-owned law firm.

Under the gag orders:

- ♦ I was instructed to conceal material information impacting the PLS case from the client representatives who were charged with making decisions on the case; and
- ♦ I was placed under extraordinary restrictions concerning any communications between myself and Washington PLS management on any matter I was handling.

My attempts over the last thirty days to resolve the matter within the Dallas Legal Division have been repeatedly rebuffed and have resulted in threats, accusations, and retaliatory action against me. Additionally, I have yet to receive any legitimate justification for the gag orders or improper conduct. Finally, the cover-up activities and improper conduct have continued into the grievance process.

Accordingly, I am obliged to "go over the heads" of AGC Vera-Rojas and Section Chief Taylor in order to resolve my personal grievance against them and, more importantly, to bring such wrongful conduct to the attention of RTC management so that appropriate action may be taken to protect the RTC and the taxpayers.

The actions of AGC Vera-Rojas and Section Chief Taylor involve fundamental issues that impact the very foundation of the Legal Division and raise questions which must be addressed:

- ♦ Do lawyers in the Dallas Legal Division have an obligation to communicate material information to the RTC client representatives who have delegated responsibility on the matter?
- ♦ Does an RTC lawyer/manager have the authority to order a lawyer/subordinate to violate his or her professional code of ethics? If so, what is the source of such authority?
- ♦ Does 12 CFR 1605 constitute the sole and exclusive statement of "ethics" which governs the conduct of lawyers within the Legal Division? Does 12 CFR 1605 pre-empt the Code of Professional Responsibility for attorneys?
- ♦ Did the Dallas Legal Division improperly discriminate against a small minority-owned law firm when it coerced the firm into billing 25% less than a majority firm for the same attorney working on the same case, simply because the bills were submitted under the letterhead of a minority-owned firm?
- ♦ Did the Dallas Legal Division act in reckless disregard of the consequences of their actions to a major PLS case when they instructed me to terminate two key fee-counsel only days before a major settlement conference and just a week before the tolling agreements expired?
- ♦ What was the Dallas Legal Division's motivation behind the gag orders, threats, discrimination, and interference with the grievance procedures?

The above issues go to the very core of the Legal Division and involve much more than a "simple grievance." For that reason, I am submitting this memorandum for dual purposes.

II. BIOGRAPHICAL BACKGROUND

The Dallas Legal Division has begun an "attack the accuser" strategy in order to avoid scrutiny of their conduct. A brief review of my record as a PLS attorney for the last two and a half years belies this recent effort to undermine my reputation.

I originally joined the Dallas PLS section in October 1990. My last Performance Appraisal (co-signed by AGC Vera-Rojas) contained the following "ratings" on a 1 to 5 scale in addition to very favorable narrative comments:

Performance "warrants special recognition"	14 categories
Performance "clearly above that expected of a competent employee"	8 categories
Performance "to the extent expected of a competent employee"	1 category
Performance "acceptable but reflects some weaknesses that can be overcome"	none
Performance "exhibits definite weaknesses"	none

I received an award for Sustained Superior Performance in 1991.

Since I received the above Performance Appraisal and award, the RTC PLS recoveries on cases under my supervision as a line attorney have accounted for almost \$60 million, or 20% of all RTC PLS recoveries in the country. The following table illustrates the distribution of RTC-PLS recoveries for Texas, Mississippi, and Louisiana thrifths by PLS attorney or office:

PLS attorney/office	Recovery	Percent
Burnside cases (under my supervision for over 2 yrs)	\$59.7 million	70%
Metroplex CFO cases (under the supervision of Rex Taylor for 1 & 1/2 years)	2.2 million	3%
Houston, San Antonio, and Louisiana CFO cases	9.4 million	11%

Washington D.C. cases	12.4 million	15%
Other	1.2 million	1%
TOTAL	\$84.9 million	100%

Naturally, I was only one member of various teams comprised of Investigations, fee counsel, experts, and others that produced such results. For example, 37 % of all RTC recoveries in the Ernst & Young ("EY") global settlement were allocated to cases on which I had worked for two years and had received formal authority to sue prior to commencement of the EY settlement discussions. (With respect to all of the results on my cases, Section Chief Taylor either actively resisted the cases or added nothing to the result.) My cases also have generated an additional \$8.9 million in settlement offers either under consideration or approved by the RTC.

In summary, I believe that my record should refute any attempts to divert attention from my charges by attacking me. To that end, I attach my SF 171 and Performance Appraisal.

III. THE UNDERLYING CONTROVERSY

A. THE PLS CASE

The center of this matter involves a PLS case that was--and is--a major highlight of my professional career.

As the line attorney assigned to the institution since January 1991, I spent over 1000 hours (many of which were uncompensated) to help develop the claims from the preliminary investigation through the final stages of settlement recoveries. Such efforts necessitated working weekends out-of-town and 16-hour days over a two-year period. By January 1993, however, the efforts of myself and others (including fee counsel) had paid off. Total cash recoveries and settlement offers on the RTC PLS claims for this one institution exceeded \$50 million and were second only to recoveries arising out of Charles Keating's infamous Lincoln Savings debacle.

By January 1993, we were concluding the final stages of pre-suit settlement discussions with the inside directors and had recently obtained authority to seek an asset freeze against one of the directors. The defendants had collectively offered \$5.75 million cash while the RTC sought \$7.5 to 8 million and expressed a willingness to discuss terms.

While recognizing the apparent impasse on the eve of the expiration of the tolling agreements, both sides agreed to meet again during the week of January 25 to determine if we could reach a settlement.

All parties recognized that the RTC would probably file suit at the end of the week unless the parties were very close to settlement when the tolling agreements expired on January 29.

The RTC appeared to have the upper hand going into the settlement discussions because of the pre-suit preparation of the case. The RTC had reviewed over 7.8 million documents and had taken over 35 key witness statements. The defendants were well aware of the RTC's head start and their settlement offers appeared to recognize, at least partially, the RTC's short-term advantage in preparation.

B. THE FEE COUNSEL PROBLEM

The PLS case was prepared by a majority firm/minority-owned firm joint-venture. Prior to the settlement meeting, two of the majority firm attorneys, who had been intimately involved in the day-to-day preparation of the case, announced their interest in becoming members of the minority-owned firm.

Originally, I believed that the move would have absolutely no impact on the staffing of the case since it involved only a move of two attorneys between RTC-approved firms already working on the case. In fact, I thought that the move benefited the RTC because the minority firm would be in a position to bill over 50% of the fees charged to the case and because the two lawyers were willing to reduce their rates by \$20 dollars/hour from the RTC rates approved for the majority firm.

The RTC Legal Division, however, would not agree to pay the minority firm fees for the two attorneys unless the minority firm would accept a \$45 dollar/hour rate reduction from the RTC-approved majority firm rates. AGC Vera-Rojas later rationalized the 25% rate reduction for the same attorneys working on the same file merely because they now would be submitting their bills under the letterhead of a minority-owned firm and, as such, "they will not have the [majority firm's] overhead to deal with."

By mid-January, I became concerned that the RTC and the minority firm had reached an impasse and started communicating my concerns about the impact of the impasse on the PLS case to various members of the Dallas Legal Division. My concerns escalated on Friday, January 22 when AGC Vera-Rojas told me that the RTC would not approve the minority firm rates for the two lawyers and to "Get on with [my] job, which is to recommend a local qualified firm from our approved list to be referred the matter."

I was startled by the decision and had grave concerns regarding AGC Vera-Rojas' order to replace the two lawyers just days before the final settlement meeting and the expiration of the tolling agreements. I believed that the termination of the two lawyers at that time would have such a dramatic adverse impact on the

probability of success and the cost-effectiveness of the PLS case that I reluctantly would be forced to recommend to settle the PLS case for whatever we could get during the week of January 25 rather than having to file suit utilizing counsel who were unfamiliar with the case.

I went to Section Chief Taylor to explain more fully my alarm and to determine his position on the matter. At his request, I immediately drafted a memo that set forth my concerns over the decision to terminate the two lawyers who were joining the minority-owned firm:

Substantive impact on the case

- ♦ The two lawyers had spent 1800 hours at a cost of \$315,000 to prepare the case for trial and were two of the three primary trial lawyers on the case. Much of their knowledge and "appreciation" of the facts of the case would be lost in a transfer of the file to substitute lawyers.
- ♦ The impending settlement discussions and tolling expiration did not afford us sufficient time to educate new counsel. The authorization to seek an asset freeze complicated the matter because of a possible mini-trial shortly after filing.
- ♦ The defendants would view the termination of the attorneys who were most knowledgeable about the case as a major self-inflicted setback for the RTC and a sign of the RTC's lack of "will" to pursue the case. I was concerned that even the existing settlement offers might evaporate.
- ♦ I also pointed out that I do not believe that counsel are fungible and communicated my observations concerning the quality of the two attorneys.
- ♦ Finally, I observed that the termination decision essentially "hand-cuffed" the business-side and myself in the negotiations. We could not be as vigorous in our positions if we knew that the RTC was not prepared to litigate as effectively in the event that the defendants did not meet our settlement goals.

Diminished cost effectiveness.

- ♦ The termination decision also would increase rather than decrease the cost of litigation because of the

estimated cost of duplicating work for which the RTC had already paid.

- ♦ I estimated that the net increase in the cost of replacing counsel (even deducting the \$30/hour "savings") would exceed \$220,000 --- even if we ignored the substantive impact of the termination on the case.

I felt that the memo made a strong case for keeping the PLS "team" intact and believed that AGC Vera-Rojas would change his position. I was greatly mistaken.

III. THE "GAG ORDERS"

A. THE FIRST GAG ORDER

On Saturday, January 23, I received an E-mail from Section Chief Taylor that absolutely stunned me. Despite the adverse impact of the termination decision on the case, I was told that it was "...not a matter to be discussed with the client representatives." Immediately following the gag order instructing me to conceal material information from the client, Section Chief Taylor threatened:

"As a warning, your conduct may be considered insubordination. Please do not make a difficult situation worse for yourself."

After a sleepless weekend, I called PLS Senior Counsel Mark Gabrellian at 7:00 am CST on Monday, February 25, to inform him of the matter. Then I met with Section Chief Taylor when he arrived at the office at 9:30 am and informed him that:

(a) I believed that his gag order was both illegal and unethical because I was under an obligation both as an RTC employee and a lawyer to communicate material information to the client so that they could make informed decisions and recommendations. In this case, the business side needed to know of the impact that termination of counsel could have on the probability of success and cost of pursuing the lawsuit as opposed to accepting the pending settlement offers.

(b) I told Mr. Taylor that I had called Senior Counsel Gabrellian and that either he or both of us could call Mr. Gabrellian to discuss the matter.

(c) Additionally, I told Section Chief Taylor that, in view of the gag order, he himself had an ethical duty to call Managing Investigator DePugh to advise him of the gag order and the decision.

Section Chief Taylor terminated the meeting without denying the allegations or explaining his actions. Instead, he immediately went to consult with other members of the Dallas Legal Division.

I had no further communication with Section Chief Taylor until 2:00 pm on Friday, January 29, when I hand-delivered an E-mail which memorialized our Monday conversation to him. I still have never received any explanation, justification, or clarification of the gag order from Mr. Taylor.

B. THE SETTLEMENT DISCUSSIONS

I carefully considered the matter and sought counsel on the legality of the gag order. On Monday, January 25, I fully informed the client of what had transpired. I also informed the client that Senior Counsel Gabrellian had advised me "not to worry" about the termination of fee counsel because, if the matter was not resolved in Dallas, Washington would try to intervene. He also told me to go into the settlement discussions with "guns ablazing" but to advise the client of some uncertainty on the fee counsel issue.

The client and I then made the decision to negotiate based on the premise that the RTC would not terminate counsel. We went into the discussions with "guns ablazing" and ultimately received settlement offers totalling \$7.3 million (mostly cash)---\$1.55 million more than the previous offers.

C. THE SECOND GAG ORDER

AGC Vera-Rojas did not forgive my conversations with Senior Counsel Gabrellian and my persistence in the matter. On Tuesday, February 2, he sent an E-mail to the DC PLS and the Dallas Legal Division management which made several bizarre allegations and then imposed a second gag order:

"In view of the above, I will appreciate that if you have any questions regarding this matter or any other matter presently under the oversight of Mister Burnside, or otherwise wish to communicate with him in your role as PLS coordinator for the Dallas Office, you do so through Rex Taylor and David Stockwell together or with myself present. (emphasis added)

This second gag order apparently sought to isolate me further as punishment for daring to speak out against the actions of AGC Vera-

Rojas and Section Chief Taylor. The order has interfered with my ability to perform my duties.

D. A SMALL MINORITY FIRM CAPITULATES....

While the battle raged within the RTC, the minority firm was undergoing its own private problems and the economic reality of being a small firm (without the "overhead" that would permit it to withstand cash flow concerns¹) forced the firm to capitulate as to the one attorney who made the move prior to the rate controversy. The other attorney, a female partner at the majority firm, ultimately decided to stay at the majority rate and still works on the PLS case at an RTC approved rate which is \$20 more than the proposed minority rate.

The decision had a clear discriminatory impact against a minority firm. The RTC had decided that each of the lawyers were worth \$180 and \$170/hour as long as they billed their time under the letterhead of the majority firm. Yet the RTC demanded that the same attorneys working on the same file were only "worth" 75% of the majority firm's rate if they billed their time under a letterhead of a minority-owned firm. Small wonder the female partner decided to stay at the majority firm!

IV. THE FEBRUARY 5 GRIEVANCE and INTERIM COMMUNICATIONS

A. THE GRIEVANCE

After all my informal attempts to resolve this matter failed, I reluctantly filed a grievance against Rex Taylor and Arturo Vera-Rojas. The FDIC Grievance Procedure allowed me to submit my grievance to my immediate supervisor or "...whoever was responsible for the action being grieved." Accordingly, I addressed the grievance to the two individuals who had issued the gag orders and threats --- AGC Vera-Rojas and Section Chief Taylor. I also gave a copy of the grievance to Senior Counsel David Stockwell, the immediate superior of Section Chief Taylor.

The grievance sought the following joint and several relief from Messrs. Taylor and Vera-Rojas:

"(a) A prompt written response to the matters raised in this grievance with citations to the purported authority under which the gag orders were issued;

(b) A determination that the gag order of January 22 which sought to prevent me from communicating material information to the client was unethical and illegal;

¹The case flow problems imposed on this particular minority firm by the RTC were specifically described in the American Bar Association Journal, March 1993, at 18, in an article entitled "RTC Payments Delayed, Some lawyers wait more than a year for fees from thrift agency." I attach a copy of the article to this memo.

(c) A repudiation of the February 2 gag order that places extraordinary restrictions on my ability to communicate with PLS management in Washington;

(d) Assurances that no retaliatory action or reprisal will be taken against me by virtue of this grievance or the matters which formed the basis of this memo;

(e) An investigation of this matter by an impartial official(s) outside of the Dallas Legal Division;

(f) The institution of appropriate corrective measures to prevent the recurrence of the incidents described in this grievance; and

(g) Such other relief that is fair and appropriate including, if warranted, appropriate disciplinary or adverse action with respect to the persons involved in this matter."

The next business day after I presented the grievance, I once again went to David Stockwell to see if we could meet to resolve this matter without going through the entire grievance process. The answer was a very emphatic "no." I later received separate E-mails from Messrs. Vera-Rojas and Taylor indicating that they would respond in 15 days.

B. THE REFERRAL TO THE ETHICS OFFICER FOR A 1605 OPINION

On February 3---nine days after I first confronted Section Chief Taylor about his unethical and illegal order---he referred the matter to Wayne Fogle, the Dallas Ethics Officer.

On February 8, David Stockwell sent an E-mail to Dallas Ethics Officer Fogle which pointed out the distinction between:

(a) "...unethical conduct...predicated upon any regulations imposed upon FDIC and/or FDIC employees assigned to the RTC..."

and

(b) Unethical conduct predicated "...upon any applicable code or codes of professional responsibility which are applicable to attorneys."

Senior Counsel Stockwell then went on to request a limited investigation "...to determine whether or not any of the regulations to which we are subject to as employees may have been involved." He did not request an opinion as to the legal ethical issues nor did he provide Ethics Officer Fogle (a non-lawyer) any information concerning a lawyer's obligation to his client.

On February 10, Wayne Fogle responded to David Stockwell's inquiry concerning the applicability of the FDIC Employee Conduct regulations with an E-mail that he could "...find no apparent ethics issues that fall within provisions set out at Part 1605 'Employee Responsibilities and Conduct'..." He went on to suggest, however, that the parties examine the provisions of 1605 that set forth various "general rules" of employee conduct to see if they might be applicable.

On February 16, I sent an E-mail to Rex Taylor which reaffirmed the source of the "ethics" that I felt dealt with the issue:

"There appears to be some confusion over what "ethics" dealt with the issue of a lawyer/supervisor instructing a subordinate lawyer to conceal material information from client representatives. In order to eliminate such confusion, I am sending you a copy of [materials from Modern Legal Ethics and applicable Canons and Rules of legal ethics.]

For example, the [Modern Legal Ethics] treatise makes the following observations:

'A client has an equal interest in receiving legal evaluations and advice from a lawyer about important steps in the matter and, periodically, about whether progress is being made or not.

.....
[I]t is clearly also the case that lawyers should not restrict the flow of information in order to exercise control over clients or to manipulate client decisions.

.....
[S]everal courts have disciplined lawyers for failing to communicate with clients or for misleading a client about the status of a matter."

I then gave Section Chief Taylor a copy of the applicable reference materials so that he could consider them in his response to my grievance.

V. THE TAYLOR RESPONSE and BURNSIDE REPLY

I received Section Chief Taylor's formal response to my grievance on Friday, February 19. The ONLY portions of the memo that dealt with the SUBSTANCE of my charges stated:

"This is in response to you grievance, dated February 5, 1993, where in (sic) you grieve "gag orders." I have read your 10 page memorandum with its 11 exhibits and considered your request therein for relief as set out in the section entitled 'VIII. CONCLUSION', further enumerated (a) through (g). This is my response.

...[Taylor Procedural Objections²]...

Your allegations of supervisory ethical misconduct have been refuted by the ethics officer. You are in receipt of a copy of his findings." (emphasis original)

Section Chief Taylor's position that the Fogle E-mail completely exonerated him ignored the entire course of events over the previous thirty days. More importantly, however, the implications of the Taylor position, which totally disregarded the legal ethical issues, was necessarily premised upon the following fatally flawed tenets:

- ♦ Legal ethics do not govern the conduct of lawyers in the RTC Legal Division.
- ♦ Section 1605 is the sole and exclusive source of ethical principles that govern the conduct of RTC lawyers.
- ♦ Section 1605 preempts the Code of Professional Responsibility of a lawyer in the RTC Legal Division.
- ♦ An RTC lawyer/manager has the authority to order a subordinate attorney to conceal material information from the RTC client representatives charged with making a decision on the matter being handled by the subordinate attorney.

On the morning of Monday, February 22, I submitted my reply to the Taylor substantive position to AGC Vera-Rojas, Senior Counsel Stockwell, and Ethics Officer Fogle. My memo, titled "Status of Legal Ethics in the Dallas Legal Division," begged them to reject the Taylor position because:

"The very essence of the relation between the Legal Division and the Business Side of the RTC demands full and free communications between the "lawyer" and the "client" so that they can make fully informed joint decisions. As noted in my E-mail to Rex Taylor prior to his response:

'[I]t is clearly also the case that lawyers should not restrict the flow of information in order to exercise control over the clients or to manipulate client decisions.' Modern Legal Ethics Sec. 4.5 (Communications with Clients)

² Rex Taylor's Response also made some rather strange "procedural" objections that completely ignored the factual record and the substance of my charges. I replied to such "procedural" points in a memorandum dated February 23.

Once a lawyer/manager orders a lawyer/subordinate to conceal material information from the client, everyone suffers. The client suffers because they are making decisions on incomplete information and are unsure whether they can trust their lawyers. The Legal Division suffers because they invite the mistrust of the very clients they have the obligation to advise. The individual lawyers suffer because they are asked to abandon their professional ethics. And, ultimately, the entire RTC suffers because of the lost public confidence in the RTC decision-making process."

AGC Vera-Rojas refused to respond to my February 22 memo or my grievance and stated:

"Regarding your sophistic, rambling and specious charges alleging violations of professional ethics, I find them totally false, senseless, and undeserving of any serious response. If you wish to level any charges against me personally, alleging that I have somehow violated the professional code of ethics, you can direct your correspondence to the Ethics Committee of the Bar Association of the Commonwealth of Puerto Rico. Be forewarned though, that I will reserve all my rights as an individual to pursue redress for any libelous or slanderous statements."

Rex Taylor simply reaffirmed his position that Ethics Officer Fogle had refuted all my charges against him and declared the matter "over."

Ethics Officer Fogle's first reaction to the Taylor position that Fogle had exonerated Taylor was to ask me: "Did he put that in writing?" Wayne Fogle then notified me that he would send the matter to Washington but that it would take some time for the Ethics section to formally respond to my memo regarding the "Status of Legal Ethics in the Dallas Legal Division."

David Stockwell felt that the issues raised in my memo were outside the "scope of his responsibilities." Recognizing his reluctance to opine as to matters relating to the conduct of his direct superior, I subsequently withdrew my request for his opinion "to the extent that [he believes] that a response may involve AGC Vera-Rojas."

VI. THE REFUSAL TO COMPLY WITH THE GRIEVANCE PROCEDURE

The attempted cover-up has not stopped with the gag orders and threats --- it has continued into the grievance procedure itself.

- ♦ AGC Vera-Rojas has explicitly refused to give the required "Step One" response to the grievance against him.

- ♦ AGC Vera-Rojas and Section Chief Taylor have sought to prevent me from bring this matter to your attention by refusing to identify who AGC Vera-Rojas reports to in the Legal Division.
- ♦ AGC Vera-Rojas has sought to deprive me of my right to a "Step Two" review of my grievance against him and Section Chief Taylor by "appointing" his immediate subordinate and close personal friend as the Step Two reviewer of their misconduct.
- ♦ The management of the Dallas Legal Division have repeatedly rebuffed my requests for meetings or discussions concerning the matter.
- ♦ I continue to be the subject of threats and retaliatory action.

Such conduct hardly comports with the purpose of the FDIC Grievance Procedure which is to meet:

"...a continuing commitment by the Corporation for open and equitable treatment of all Corporation employees and its scope, purpose and provisions are to be interpreted in this light."

The procedure also requires that the grievance be given "full, impartial, and prompt consideration" and calls for "...every reasonable effort [to] be made by all parties concerned to resolve this matter fairly and promptly."

What type of "open and equitable" or "impartial" grievance procedure permits the subject of the grievance to personally select his own close friend and immediate subordinate as the "reviewer" of his own misconduct? How "reasonable" is AGC Vera-Rojas' ~~response~~ either to discuss the matter or to submit the mandated formal response to my grievance?

VII. CONCLUSION

Over the last thirty days, I have often wondered what precipitated this violent reaction to my internal protests over the termination of the fee counsel on the biggest PLS case in the region? What was the motivation of Arturo Vera-Rojas and Rex Taylor when they embarked on a course of action that included:

- ♦ A gag order intended to conceal material information from the very client they had an obligation to serve.

- ♦ A second gag order intended to prevent a PLS line attorney from freely communicating with PLS management in Washington.
- ♦ Personal attacks on a PLS line attorney whose cases account for 77% of all PLS recoveries by the Dallas RTC Office.
- ♦ Discrimination against a minority-owned law firm.
- ♦ Actions taken in reckless disregard of the consequences to a PLS case that is second only to Charles Keating's Lincoln Savings in total RTC PLS recoveries.
- ♦ Refusing to explain or defend their actions in the face of formal charges of unethical conduct.
- ♦ Making a mockery of the FDIC Grievance Procedure by trying to appoint AGC Vera-Rojas' personal friend and subordinate as the Step Two reviewer.

Originally, I thought that the grievance process would pierce the cover-up. Yet I am now entering Step Two without any explanation of the motivation behind the extra-ordinary attempts to silence me.

I suggest the first place to begin looking for the motivation behind this matter might be the recent battle between the Legal Division and the business side over the control of the hundreds of millions of dollars paid to RTC Fee Counsel.

After this whole matter began, I learned that the Dallas Legal Division was spending hundreds of hours fighting a decision to transfer control of the legal services budgets and contracting authority from the Legal Division to the RTC Contracting ~~and~~. Was I simply in the "wrong place at the wrong time" when I communicated my concerns about the Legal Division's handling of a law firm to the client at the same time that AGC Vera-Rojas was engaged in a "turf-battle" over who should control the contracting process?

Yet regardless of whether the issue was the retention of counsel on a single PLS case or the control over hundreds of millions of dollars in legal services contracts, the principles of legal ethics remain the same:

"[I]t is clearly also the case that lawyers should not restrict the flow of information in order to exercise control over the clients or to manipulate client decisions."

THOMAS J. BURNSIDE

SS# 295-62-2760

SUBSTANTIVE EXPERIENCE

Resolution Trust Corporation (FDIC)
Professional Liability Section
Southwest Regional Office/Dallas Office
Dallas, Texas 75219

Senior Attorney
10/90 to present

At various times, I conducted and supervised the investigation and/or litigation of claims against: (a) directors, officers, and control persons of 26 thrifts totalling over \$8 billion in assets; and (b) the accountants, attorneys, securities brokers, appraisers, investment bankers, and other professionals that dealt with such thrifts. I spent approximately 75% of my time during the last two years investigating, developing, and pursuing the following cases:

INSTITUTION	CLAIMS	RESULT
\$800 million	<p>Claims against Big Six accounting firm for damages in excess of \$400 million arising from misstated financial statements submitted to regulators to induce FSLIC to insure an uninsured thrift</p> <p>Claim against inside directors for insider abuse</p>	<ul style="list-style-type: none"> • Suit against Big Six firm and defendant class of individual partners for \$400 million authorized • \$43.69 million settlement with accountants; settlement represented 34% of all RTC recoveries in global settlement with firm • Inside directors collectively have made settlement offers of \$4.3 million based on net worth • Recommended asset freeze against director who transferred \$8 million to "family trust" shortly after notification of RTC claims
\$1.07 billion	<p>Claim against investment bankers, Big Six accounting firm, and inside directors for damages of \$35 million from holding company sale of five real estate servicing subsidiaries to thrift</p> <p>Claim against inside directors on a land flip designed to manipulate regulatory capital</p>	<ul style="list-style-type: none"> • Suit against all defendants authorized • Settlements with investment bankers and accountants totalling \$11.05 million • Settlement with two directors at \$1.15 million based on significant percentage of their net worth • Pending litigation against remaining two defendants
15 thrifts located throughout United States	<p>Claims against securities broker for commissions and trading losses in a flawed "bedding" program marketed to small thrifts</p>	<ul style="list-style-type: none"> • Recommended and received approval for first nationwide consolidated RTC investigation • Appointed National Coordinator for claims against the brokerage house; supervised investigation of bedding program • Securities broker has offered \$4.68 million to RTC and \$1.32 million to FDIC to settle claims from program

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\$1.44 billion	Claims against Big Six accounting firm for \$70 million in damages from flawed audit	<ul style="list-style-type: none"> • Investigated claim and made formal recommendation to sue, awaiting authorization decision • Pre-suit settlement discussions underway
\$830 million	Claims against large law firm and 33 individual partners for damages in excess of \$20 million arising from flawed regulatory advice	<ul style="list-style-type: none"> • Suit authorized and filed
\$430 million	Claim against law firm and 44 partners for damages in excess of \$30 million arising from attorney's participation in scheme to manipulate thrift's capital to allow growth	<ul style="list-style-type: none"> • Investigated claim and made formal recommendation to sue, awaiting authorization decision
\$860 million	Claim against small law firm and individual partners for damages of \$15 million arising from flawed regulatory advice	<ul style="list-style-type: none"> • Suit authorized; ongoing pre-suit settlement discussions underway
\$460 million	Claim against RTC law firm for damages of \$4 million arising from disclosure of confidential information concerning sale of thrift subsidiary	<ul style="list-style-type: none"> • Investigated claim and made formal recommendation to sue, awaiting authorization decision

Naturally, a Senior Attorney is only one member of a team that produced such results. Nevertheless, my proactive involvement in cases and a willingness to work weekends and 16-hour days when needed materially aided the achievement of the ultimate results. In developing my cases, I submitted 8 Authority to Sue memos and 8 Authority to Settle memos; recommended and obtained more than ten Orders of Investigation; issued almost 200 administrative subpoenas; and recommended 3 subpoena enforcement actions. In addition to working closely with fee counsel and various expert witnesses, I personally took witness statements, reviewed documentation, attended interventions and closings, drafted legal memoranda, and handled settlement negotiations.

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SUBSTANTIVE EXPERIENCE (Cont.)

Reinert & Duree, P.C.
St. Louis, Missouri 63102

Partner/Associate
10/83 to 10/90

I had seven (7) years experience as outside fee counsel representing fidelity and surety bonding companies¹ with an emphasis on financial institution bond claims and related litigation. In that capacity, I pursued negligence, fraud, and other claims as plaintiff against directors, officers, professionals, financial institutions, and others. Areas of significant involvement included:

<u>Banking Litigation</u>	(commercial loan, operations, investments, directors and officers liability, lender liability, trust department, letters of credit, bank collections, commercial paper, investment securities, and secured transactions)
<u>Commercial Litigation</u>	(responsible for handling pleadings, discovery motions, pretrial matters, settlement negotiations, jury and bench trials, and appellant practice in federal, state and bankruptcy courts in cases ranging from 45 million down to \$10,000)
<u>Trials</u>	("First Chair" commercial jury and bench trials including cases against banks involving a banker's standard of care and owner-contractor construction disputes)
<u>Directors & Officers Liability Litigation</u>	(pursued directors & officers of financial institutions and their D&O carriers including recovery of 75% of policy limits in MGIC liquidation)
<u>Securities & Commodities Litigation</u>	(insider trading, lack of underwriting due diligence, Blue Sky, the SISCorp fraud, the Beville Bressler fraud and CFTC claims)
<u>Bond Claims Litigation</u>	(defended claims under Bankers Blanket Bonds, Stockbrokers Blanket Bonds, Securities Dealers Bonds, Public Official Bonds, Financial Guaranty Bonds, and Commercial Fidelity Bonds)
<u>Professional Malpractice Litigation</u>	(municipal bond counsel, bank counsel, and bank auditor malpractice cases)

¹ Companies represented included National Union, Chubb (Federal Insurance), F & D of Maryland, St. Paul, Seaboard Surety, Capital Indemnity, Crum & Forster, Transamerica, Travelers, Commercial Union and other fidelity and surety underwriters.

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ACADEMIC

Washington University School of Law, J.D. 1982
St. Louis, Missouri
Class Rank: 18 of 173

Managing Editor - Urban Law Annual, volumes 23 and 24.
Extensive editorial responsibilities and supervised staff of 60 law students

Author, Tax Increment Financing - Rational Basis or Revenue Shell Game,
24 Urban Law Annual (1982) .

Two-time recipient - American Bar Association Urban, State and Local Government Award

REFERENCES

Julie Yanda (913) 344-8437
Counsel (Section Chief) (PLS)
North Central Region - RTC
Kansas City, Missouri

Roberta Clark (202) 736-0312
Counsel (PLS)
Washington, D.C.

Rick Matejka (314) 928-4730
Attorney
3805 Hermitage Lane
St. Charles, Missouri 63303

OTHER

- Received FDIC Award for Sustained Superior Performance - 1991
- Action-VISTA - Community Organizer (Hannibal, Missouri) 1978-79

JOINT WRITTEN STATEMENT OF

BRUCE J. PEDERSON AND JACQUELINE P. TAYLOR

We wish to thank the Chairman and the Committee for the opportunity to testify about how the Resolution Trust Corporation ("RTC") treats "whistleblowers." These are public servants in the truest sense of the word who attempt to protect taxpayer interests by detecting and exposing significant waste, fraud and abuse in RTC operations. The treatment accorded these messengers and their concerns involves public policy issues and presents a telling litmus test on the character of senior RTC management. To what degree does the RTC want to facilitate this control mechanism?

Having spent over a year "blowing the whistle" on RTC waste and abuse, we believe that we have much to offer the Committee. We put our careers on the line by testifying before this Committee in open session just over a year ago. The unpleasant truth about a bungled agency reorganization, then and now, did not please RTC management. In clear retaliation, the RTC subjected us to many classic forms of punishment reserved for employees who buck agency "spin control."

These reprisals implicate the ineffective safeguards that failed to protect us in our efforts to expose waste and abuse at the RTC. Our ensuing treatment as second class citizens also raises serious questions about the maturity and fairness of certain RTC senior managers. We trust that our painful experience will help guide the Committee toward reforming various RTC programs, framing truly effective whistleblower protections and holding culpable RTC managers accountable for "killing the messengers." While we may be the most publicized whistleblowers at RTC, we are not alone. There are many conscientious, hard working, and ethical employees at the agency who deserve better leadership and protection.

In our continuing effort at public service we respectfully present this statement. It consists of seven major sections: (i) Summary; (ii) Our Backgrounds; (iii) RTC Reprisals; (iv) Absence of Protection; (v) PLS Update; (vi) RTC Chaos; and (vii) Proposed Solutions.

I. SUMMARY

We come before the Committee today as veteran RTC "whistleblowers." For us, the past year has been a nightmare. Armed with only the truth, we have served a combat tour of duty on a bureaucratic battlefield. We are exhausted, disillusioned that those who seek the truth are punished, and anxious to "rotate" to a sane work environment.

Ever since publicly identifying significant waste and abuse inherent in an ill-advised reorganization of the RTC's Professional Liability Section ("PLS") in 1992, we have been targeted for retaliation by certain agency managers. For over fourteen months, adversarial management has trained its collective cross hairs on us. Notwithstanding this campaign, we successfully remained on the agency payroll in order to continue our efforts to serve the public interest by working with various oversight entities with jurisdiction over the RTC. At times, this difficult period has felt like being stranded behind enemy lines in wartime.

Using a variety of harassing techniques, our daily lives at work were made as unpleasant as possible by RTC managers in the hopes that we would choose to resign or that trumped up disciplinary charges could be made to force us from the RTC. We were placed in exile in various remote offices throughout Denver, given make work projects and then later reassigned to permanent positions which underutilized our professional skills, threatened with forced geographic relocations, slandered professionally, subjected to mail censorship, repeatedly passed over for new management openings, held to hyper-technical interpretations of time and attendance rules, threatened with adverse performance evaluations, exploited with sham grievance and Equal Employment Opportunity ("EEO") proceedings, and hit with an unauthorized covert search of computer WordPerfect files.

No well intentioned Federal employee should have to endure this vindictive treatment. We are particularly chagrined at our fate given the accuracy of our initial testimony and the discredited record of those managers who punish employees like us. As we previously testified, nationwide, the RTC PLS Program was seriously set back by the 1992 reorganization. Whether measured by total filings, timeliness of filings, empty attorney slots, or program coordination, PLS is now worse off. The remainder of the RTC has not fared well either. Not a month goes by without new embarrassing disclosures about RTC mismanagement, some of which is created by those who have taken it upon themselves to drive us out of the agency.

While our experience is typical of government whistleblowers, it is still remarkable for how brazenly RTC management has targeted us for reprisals since our testimony before the Committee in August of 1992. RTC managers either concoct mis-

leading renditions of events to justify their retaliation or ignore Congressional oversight and legal parameters.

None of the theoretical "whistleblower" protections ever manifested in reality. RTC management chose to ignore applicable statutes ostensibly because of loose draftsmanship. Agency grievance procedures were gutted by delay, an examiner handpicked by RTC management, and the absence of any final decision. The RTC EEO complaint procedure proved to be an exercise in futility based on repeated agency delay. Despite diligent rank and file employees, the RTC Office of Inspector General ("OIG") was unable or unwilling to shield us from attacks by Legal Division management. The Office of Special Counsel and the Merit Systems Protection Board were unavailable because their jurisdiction excludes RTC employees. By default, this Committee was left with the difficult task of policing RTC personnel practices. The Committee has neither the resources nor the appropriate tools to oversee how individual Federal employees are treated on a daily basis in their respective agencies.

Several reforms are in immediate order. No effort by the Clinton Administration to "Reinvent Government" will be complete without remedying the problems we have encountered. Our Statement outlines internal agency reforms and those which will require Congressional action. Together, they can make it far more difficult for mean spirited management which feels threatened by the truth to retaliate against employees would seek to expose waste, fraud and abuse on behalf of the taxpayer.

II. OUR BACKGROUNDS

We are no strangers to this Committee's oversight work regarding the RTC. On August 11, 1992, together with another witness and former PLS manager, we testified before the Committee about the damage inflicted on the RTC's PLS Program by the agency's ill-advised reorganization in May of 1992. We argued that the American taxpayer stood to lose millions of dollars in forfeited recoveries because numerous experienced PLS attorneys and managers were jettisoned and most of the cases were reassigned. On October 1, 1992, we attended a subsequent hearing as observers and listened to former RTC president and CEO Albert V. Casey offer a faulty defense of the PLS Program reorganization. Thereafter, in November of 1992, we provided the Committee with a detailed 53 page Rebuttal Statement (with attached exhibits) which exposed the numerous omissions, misleading statistics, and contradictions contained in Mr. Casey's Statement and an accompanying RTC Legal Division Staff Report.¹

Those hearings were preceded and followed by a steady working relationship with the Committee's immediate staff, aides to its members, and various officials with the U.S. General Accounting Office (GAO). Over those many months, we made ourselves available at their request in order to provide background briefings, report on newly discovered substantive problems within RTC operations, and interpret internal agency events.

Our initial testimony and ensuing analyses of RTC PLS issues have been widely reported in the broadcast and written media during the past year. The media's ongoing efforts to obtain our thoughts on RTC issues attests to the sound record of credibility we amassed over these many months. Other oversight officials in the GAO and RTC Office of Inspector General and Members of Congress drew similar conclusions. Our concerns always have checked out.² The same cannot be said of RTC management. On June 9, 1993 we were recognized for our efforts by being among the five recipients of the 1993 Cavallo Award for Moral Courage in Government and Private Industry.³

Prior to our employment experience at the RTC we had successful legal careers. Bruce Pederson had compiled eleven years of distinguished service as a lawyer working for the Federal government. He had the most government PLS experience, over seven years with the FDIC, of any attorney at the RTC.⁴ During her fifteen years of legal practice, Jacqueline Taylor had amassed a highly successful public

¹These proceedings were collected and published in a hearing record released earlier this year. *Consolidation of the Professional Liability Section of the RTC Legal Division, 1992: Hearings Before the Senate Committee on Banking, Housing and Urban Affairs, 102nd Cong., 2nd Sess. (August 11, 1992 and October 1, 1992)*. This volume hereinafter is referred to as "*PLS Hearings*."

²Exhibit 1 consists of letters we received from Representative Patricia Schroeder and the U.S. General Accounting Office thanking us for the "invaluable" information and insight we provided to them as well as the Senate and House Banking Committees.

³Exhibit 2 consists of our Cavallo Awards acceptance speeches.

⁴*PLS Hearings* at 122-123.

and private sector track record working for the State of Minnesota and several large Fortune 500 corporations.⁵

III. RTC REPRISALS

We have identified four distinct periods of reprisal while employed at the RTC. These stages commenced with the day we began work at the agency and continued unabated to the present. Our eras of persecution are as follows: (i) Turf War; (ii) Put Back Program; (iii) Gulag Exile; and (iv) House Arrest. Each period and its attendant retaliation is described below.

All four periods are depicted in great detail in an attachment called "Time Line of Abuse of RTC Whistleblowers and Major Events—May, 1992 to September, 1993" ("Time Line"). It appears as Exhibit 3. The Time Line reveals a relentless history of retaliation, both in terms of inherently mean spirited conduct as well as in terms of the volume of reprisals. The qualitative feature is compounded by the fact that we were usually singled out for punishment. With respect to frequency, we counted over 318 individual acts committed by Legal Division management. The Time Line clearly demonstrates the patterns of abuse employed against us and illustrates the fact that numerous offices within the RTC were actively participating in the agency's orchestrated agenda. For example, in addition to Legal Division management, we were unfairly treated by the RTC press office, the RTC Freedom of Information Act Branch, and the Office of Human Resources Management ("OHRM").⁶

Turf War

To fully understand the breadth of reprisal against us requires one to start with the day we began work at the agency. From "day one" we walked into a brewing turf war which soon broke out into open warfare. Senior managers of the Legal Division ("Commercial Legal") decided that they would take over the burgeoning PLS Program by eliminating its independent reporting lines to Washington, DC. Led by Acting General Counsel Richard T. Aboussie and his lieutenants who now control the Legal Division, a take over effort was launched in 1991 and continued without pause until victory was achieved in early 1992.

Using innuendo, intimidation, misrepresentations which omitted key facts, and covert lobbying, elements of Commercial Legal made their case for a take over by smearing the capabilities and the work performance of the PLS Program under John Beaty. That conduct was a form of retaliation in response to our defense of the original PLS Program.

This Statement will not dwell on the individual examples of abuse we endured during the turf war. Those acts were well documented in our testimony from August of 1992 and in the press.⁷ For that reason, the Time Line essentially begins with the Put Back Program. We only wish to emphasize that we have been pursued as targets of vindictive behavior which commenced well in advance of our appearance before the Committee.

Put Back Program

This period of retaliation was a time of mistreatment directed at ousted PLS staff. It ran from May 11, 1992, the day we were removed from our PLS management positions, to late July of 1992, when former CEO Casey was pressured by Congress and the FDIC to rescind the hastily conceived Put Back Program. As documented in the Time Line, we experienced many different kinds of reprisals during the Put Back era. This harassment took the form of several forced moves to outlying buildings in downtown Denver with little warning, censored mail delivery, unreliable telephone support, slanderous comments about us by RTC managers or contractors, failures to answer our information requests, "make work" projects, threats against other employees for their perceived loyalty to us, and violations of agency grievance procedures.⁸

Gulag Exile

After we returned from testifying before this Committee on August 11, 1992, we found ourselves in true exile. All other put backs who once shared space with us had gone on to the FDIC or been reincorporated back into the RTC Legal Division. As the sole Legal Division representatives left in the building, we had no support

⁵ PLS Hearings at 154–156.

⁶ The Office of Ethics appears to have been enlisted to also participate in searching for grounds on which to bar us from accepting the Cavallo award. To the credit of Arthur Kuzinski, the head of that office, we were ultimately cleared to accept the prize.

⁷ See PLS Hearings at 125–130 (Pederson); 151, 157–162, 165–173 (Taylor); 460–61 (Joint Rebuttal Statement).

⁸ PLS Hearings at 133–36 (Pederson); 179–83 (Taylor).

staff and were forced to rely on other RTC offices or courier runs to the main Legal Division for logistical support. This was our fate for over the next 100 days.

The first major retaliation in this period took the form of renewed threats to relocate us to the RTC office in Kansas City. This had been brewing just prior to the hearing but was pressed with renewed vigor by RTC management in August and the following months despite requests by members of Congress to stay the reassignment process.⁹ The issue finally became moot when we chose one prong of a "Hobsian Choice." We elected to remain in Denver with the price of being banned from the PLS Program.

Numerous other examples of retaliation ensued in the month following the hearing. These included filling management positions with less qualified employees, banning us from the main building unless we had prior permission to visit, continuing inadequate mail and telephone support, refusing to rule on Bruce Pederson's step three personal grievance, rejecting a PLS class action grievance on a technical ruling without support in the procedures¹⁰ and delaying investigation of Jacqueline Taylor's EEO complaints. At least one of these areas was compounded by management when it blamed us for having to admonish other employees when we complained about the lack of reliable telephones.

Beginning in October, several of our friends at work were threatened by RTC managers with their careers for having lunch with us. Jacqueline Taylor received written notice that a PLS job as Section Chief with the FDIC Denver office was withdrawn from her after she accepted the position. Later in the month, the RTC denied our request for waiver of search and duplication fees in connection with our pending Freedom of Information Act ("FOIA") request about the PLS reorganization. We had argued that the subject matter of our request qualified for the public interest waiver standard contained in the statute. Absent our payment of \$3,000.00, the agency would not process the request.¹¹ Meanwhile, we struggled in October and November to complete our Rebuttal Statement under the weight of conflicting work demands from RTC management to explain our earlier testimony.

House Arrest

This period began with our return to the RTC Legal Division office in Denver in late November of 1992 where we remain to the present. Management's campaign of retaliation against us continued unabated. In fact, it appeared easier for management to retaliate against us once we were present on premises.

The list of retaliation during our house arrest is lengthy and formidable. Despite management's stated intentions to put our differences behind us, their actions have been louder than their words. We both experienced joint forms of reprisal. For example, we were assigned to sections which grossly underutilized our professional backgrounds and experience. Bruce Pederson was assigned to the regular Special Projects Section where he was slated to work with environmental law, an area with no relation to his eight years of experience with professional liability and white collar crime. In that capacity, he received an inventory project better suited for a paralegal and a training assignment to teach the Denver staff about an obscure statute entitled the Coastal Barrier Improvement Act of 1990. Jacqueline Taylor was placed in the Asset Disposition Section where she was assigned responsibility for reviewing residential real estate contracts. By stark contrast, her prior professional experience had been in complex commercial transactions and litigation. Neither of us were consulted beforehand for our preferences or reactions to these assignments. We were not put to our "highest and best use." Consequently, we consider our assignments to be a waste of our expertise and of taxpayer funds given the salaries we receive.

Other forms of joint retaliation included smears on our professional capabilities by several members of agency management, hyper-technical enforcement of time and attendance rules, a flawed grievance proceeding in which we had no chance to prevail, continued stonewalling concerning our FOIA fee waiver request (which forced us to sue the agency in early 1993), and efforts to prevent us from accepting the Cavallo award.

We also experienced unique forms of harassment. In Bruce Pederson's case, he was threatened with a negative performance evaluation, denied reinstatement of forfeited annual leave which he was unable to use due to heavy PLS work in 1991, told to cease his independent contacts with Members of Congress or oversight committees, and admonished for attempting to commemorate the anniversary of the put back announcement on May 7, 1992. A purported offer to place him into a PLS slot

⁹ PLS Hearings at 136-37 (Pederson); 152-53 (Taylor).

¹⁰ PLS Hearings at 492-93, 542-48 (Rebuttal Statement).

¹¹ PLS Hearings at 493 (Rebuttal Statement).

in Denver now appears to be in limbo as PLS headquarters contemplates moving the vacancy to the Washington, DC office.

In Jacqueline Taylor's case, she was unable to enlist the cooperation of the Administrative Unit in obtaining documents needed for her pending EEO complaints, subjected to physical surveillance of her "comings and goings," saddled with competing work deadlines which she could not hope to meet, assigned projects without notice to her, and enmeshed in an EEO process that became progressively bogged down in delay followed by the imposition of unreasonable deadlines on the complainant.

In varying degrees, both of us have been the victims of unauthorized and unreasonable computer searches. Bruce Pederson's case is well documented and is fully set forth in Exhibit 4.

On or about March 12, 1993, Acting General Counsel Richard T. Aboussie told Assistant General Counsel Barbara Shangraw to obtain a copy of the WordPerfect files contained in Bruce Pederson's computer. She then ordered a computer technician to breach and copy those files into her computer. This "fishing expedition" was done surreptitiously, without his consent, and without a court order. To date, no credible explanation for the intrusion has appeared. Instead, RTC Legal Division management has referred to vague notions of managerial prerogative and unsubstantiated charges that Bruce Pederson was allegedly doing personal work on government time. We have since become aware of other indications that this break in was not an isolated incident, but rather, part of an ongoing pattern of harassment of us and other employees regarded as threats to management.

Computer break-ins by RTC management smack of Watergate and raise a host of troubling legal and public policy issues. Criminal statutes designed to prevent illegal wiretaps may have been violated. Federal and state constitutional, statutory, and common law privacy rights may have been breached. At a minimum, public policies for enhancing effective oversight over RTC operations clearly were contravened. If management has unrestricted authority to break into employees' computers, then employees who use their computers to document waste, fraud and abuse for oversight entities such as the OIG, GAO, and Congressional committees stand to be compromised and subjected to retaliation by the very managers they are attempting to expose. Indeed, OIG employees reportedly believe that a court order is required before they access RTC employee computers in this fashion.¹²

IV. ABSENCE OF PROTECTION

Our system of government protections for whistleblowers is broken. In return for our good faith efforts to improve RTC PLS operations, our reward has been unremitting harassment designed to drive us out of the agency. Not a single theoretical protection was effective in shielding us from the retaliation previously described. Each failed control is discussed in order of progression.

Management

The best protection for employees who strive to improve the system is a management team or organizational culture that encourages such efforts. This kind of nurturing environment prevents or quickly corrects programmatic problems by "nipping them in the bud."

The RTC, particularly its Legal Division, is radically different from this model. RTC senior managers operate with an alternative set of values. Individuals in this mold permeate throughout the organization because hiring "in the image" of a superior has trickled down management ranks. Their conduct suggests a preoccupation with raw power, remunerative compensation (whether earned or not), titles, office size and turf. At the same time, many exhibit an apathy for public service, taxpayer interests, employees who are not immediate lieutenants, and rules. These individuals employ polarization as a tool of power consolidation. There is a pervasive "we versus them" mentality. To their way of thinking, one can be part of the clique only if one does their bidding without question. Otherwise, you are against them and defined as the enemy. The turf war and use of threats against our friends at work for having lunch with us epitomize this mind set.

The play book used by RTC managers contains several favored strategies for hushing up employees who question the behavior of management and for dealing with possible oversight inquiries. These plays work even better when those responsible for oversight are always changing. Every new player offers management a clean slate with which to employ the tactics described below. In the past year, RTC managers have been able to brief a new CEO (Albert Casey), Acting CEO (Roger

¹² See Exhibit 5 which contains an exchange of E-Mails with an RTC OIG official.

Altman), CEO designate (Stanley Tate), White House staff, and Department of Treasury staff.

The first technique used by many RTC officials is management by intimidation. Their staff is told in overt and subtle ways that those who think for themselves face unpleasant consequences. The "Pederson/Taylor treatment" has become a well known term of art within the agency for referring to the punishment meted out to those who are not "team players." This chilling effect is well documented. For every witness here today, there are many other employees who could testify about waste, fraud, and abuse at the RTC. These silent witnesses, however, have chosen not to speak out for fear of this retaliation.

A second preferred tool of management is aggressive brinkmanship. Certain managers do what they feel is in their best interest and then challenge anyone else to do something about it. Threats of oversight are perceived to be mere bluffs. The burden of disciplining RTC managers thus shifts to outside parties without the benefit of any initial deterrence value. Unless these oversight entities have the time and resources to enforce their remedies, no one is held accountable at the RTC. For example, OIG and GAO reports are regularly ignored with no meaningful follow up by management.

A third tool used by RTC management is to smear their victims. The recipients or witnesses of unfair conduct at the RTC are painted to be problem employees. This somehow justifies inappropriate conduct by management. Needless to say, we have borne the brunt of this approach. Over the past year, the agency has branded us as malcontents who sought media attention because we did not retain our managerial positions.¹³ The computer break in, based on trumped up allegations that Bruce Pederson was doing personal work on office time, is yet another example.

A fourth favorite tool is characterizing issues and events with a less than complete recitation of the facts. Key pieces of information are usually left out in an effort to create a misleading impression for a third party. Examples included descriptions of Bruce Pederson's work habits and Jacqueline Taylor's professional judgment in PLS cases.

A final tool is creating a "moving target." If "caught in the act," management resorts to taking some limited action that changes the original facts so that a criticism can no longer be leveled at a procedure (or lack thereof) that no longer exists. "Back fill" directives are a good example. Once we exposed mail censorship, directives authorizing the opening of correspondence were issued. In the meantime, the core problem remains uncorrected.

Grievance Procedures

The grievance process at the RTC is a sham. It serves no purpose other than to delay resolution of legitimate employee concerns. It is a fraud in terms of giving unfounded hope to employees that the unfair treatment they receive will be remedied with these proceedings. Our experience with the process was nothing but unsatisfactory. The grievance machinery is a one way street designed to stall matters for management in the hopes that the employee will give up on pursuing a remedy or that an excuse can be found for managerial misbehavior.

In general, the grievance process is flawed because management has a conflict of interest in functioning as both a participant and an umpire. Management holds the employee to every technical requirement of the directive governing grievance procedures.

Conversely, it ignores the rules or makes up self-serving ones where the directive is silent or ambiguous. The only questions answered are those that produce answers favorable to management. These problems are best illustrated by Bruce Pederson's personal grievance, filed in May of 1992, which has yet to be decided. His frequent requests for a final ruling have gone ignored. The PLS Class Action Grievance wash summarily dismissed because management had never heard of the class action approach. It then converted this grievance into a personal grievance for Jacqueline Taylor which also has not been decided. In another grievance case in which Bruce Pederson served as the employee's representative, management directed that the employee's step two appeal actually go to the subordinate of the step one decision maker!

Things do not improve with the retention of a grievance examiner. That individual is selected and paid by the agency with no input from the grievant. In our cases, the examiner imposed arbitrary deadlines (citing a need to expedite the investigation), chose to interview mostly management witnesses while ignoring the majority

¹³ We have consistently objected to that characterization of us. Rather than acting like mere malcontents, we have deliberately remained at the RTC, in the face of continuing retaliation, in order to continue working with oversight entities.

of our witnesses, prepared affidavits for the witnesses using his words which frequently left out many of their comments, arbitrarily limited our oral and written evidence by cutting off oral testimony and refusing to accept documentary evidence, prematurely closed the record despite our request for time in which to submit documents, and engaged in a conflict of interest by attempting to settle the grievances while retaining the power to adjudicate them.

EEO

The Equal Employment Opportunity complaint procedure is one of unexplained delay by the RTC, followed by unreasonable time deadlines placed on the complainant. As with the grievance process, no meaningful redress is offered to the employee until the proceeding leaves the agency for the Federal courts.

OIG

The RTC OIG remains a mirage of safety for employees seeking whistleblower protection. Despite having an agenda designed to prevent or detect waste, fraud, and abuse in RTC operations, the OIG does little to safeguard agency employees from retaliation for reporting instances of this mismanagement.

Several factors appear to undercut the OIG's ability to protect whistleblowers or stop abuse of employees. First, there is no clear statutory jurisdiction to do so. OIG agents freely admitted this position to us. Instead, their stated emphasis was on criminal behavior or obvious violations of administrative rules (i.e., time and attendance). While we believe that retaliation against a whistleblower is a form of "abuse," we do control the priorities of that office.

Second, there is a widespread employee perception that the OIG is unaggressive. The OIG headquarters in Washington, DC is seen as a "black hole" from which little emerges on a timely basis. Individual employees who file complaints are rarely told of what becomes of their stated concerns. These perceptions were not helped by the testimony of Inspector General John Adair last year. He admitted that his office maintains a "zero file" for matters which his office has no intention of investigating.¹⁴

Finally, the RTC OIG is hamstrung by its organic statute. OIG agents have told us that the OIG does not even have the power to recommend to RTC management, much less enforce needed reforms to cure mismanagement. Instead, the model provides that OIG reports are tendered to RTC managers for their information. These reports are not intended to encroach on the business judgment of the managers and have no binding effect. As a result, RTC management feels comfortable reading and then dismissing whatever findings are presented.¹⁵

Merit Systems Protection Board/Office of Special Counsel

These remedies are not available to RTC employees as a matter of statutory jurisdiction. Consequently, they do not offer the potential of protection. This problem was documented in a recent GAO Report entitled *Whistleblower Protection*.¹⁶

GAO/Congressional Oversight Committees

This form of oversight is ill-equipped to provide protection to individual employees on a case by case basis. The GAO typically takes many months to complete its lengthy audits and investigations. These efforts also concern programs and not people.

Oversight committees are limited by competing demands for time and resources. Historically, they have relied on the deterrence value of future oversight hearings and appropriations to encourage lawful and proper agency conduct. This approach breaks down in the case of the RTC where management chooses to "call the bluff" of oversight committees and act as it sees fit. The burden then falls to the Congress to catch up and function as the "cop on the beat." Congressional resources are far better used in addressing the formidable policy issues inherent to each agency's mission. However grateful we are, we already regret that so much of this Committee's time and attention has had to be focused on the wrong doings committed in the RTC Legal Division.

V. PLS UPDATE

Management retaliation against Federal employees has no place in government. It becomes all the more egregious when committed against public servants who

¹⁴ PLS Hearings at 387-89.

¹⁵ Several examples are described in Section VI regarding mismanagement in the Legal Division. These instances have been widely reported in the press.

¹⁶ United States General Accounting Office, *Whistleblower Protection: Agencies' Implementation of the Whistleblower Statutes Has Been Mixed*, (March 1993) at 6-7.

prove to be accurate in their whistleblowing efforts. This is our case. Third party investigations of the ill-advised PLS reorganization have since vindicated much of our testimony before this Committee on August 11, 1992. The GAO, RTC OIG, and the press all have documented what we stated: The 1992 reorganization of the RTC PLS seriously set back the Program and impaired the claims work of the Section at a critical time.¹⁷ As a result, diminished recoveries will add to the cost of the thrift bailout and adversely impact the taxpayer.

The corroborations detailed below do not come as a surprise. The vehement all out attack launched against us by the RTC following our testimony strongly suggests that our statements hit the raw nerve of truth. Why else would the vast resources of a large Federal agency be marshalled against two individual employees in an effort to discredit their revelations and smear them personally? As depicted in the Time Line, this effort has gone on for over a year. People who have little to say or who are "off the wall" in their assessments do not receive such muscled attention. Still, truth persists and patiently waits for others to discover it anew.

In his testimony last year, CEO Casey stated that "due to the reorganization, the [PLS] program is stronger today than it has ever been."¹⁸ He based this conclusion on streamlining of management and increases in attorney slots. The ensuing results hardly support this ridiculous claim. The contrary conclusions reached by various observers are detailed below. It is noteworthy that the RTC has subtly shifted from defending the reorganization as an improvement to now calling it a benign event that did no harm.

GAO

Following nine months of work, the GAO provided its own assessment on how the reorganization affected the PLS Program. In its report dated June 28, 1993, the GAO found *nothing* to suggest that the Program was improved in any way.¹⁹ Indeed, after noting the turnover and loss of expertise caused by the reorganization, the GAO Report concluded that there was "risk that the development of future (PLS) claims may suffer from inadequate staffing and staff's lack of experience."²⁰ The fact that RTC management may not have deliberately intended to produce this carnage does not detract from the negative result.²¹ A bungled reorganization of this magnitude in the private sector would lead to swift accountability by a board of directors.

The particulars are hardly flattering to CEO Casey or the managers in the Legal Division who devised the PLS reorganization. Set against the backdrop that most of the RTC PLS work worth billions of dollars *still* remains to be done, the GAO Report noted that:

. . . some of the management action taken by RTC, as they affected PLS, were ill-conceived and poorly implemented. As a result, RTC's decisions to consolidate and reassign PLS attorneys demoralized PLS staff and disrupted the program.

One half of the PLS attorneys have left the program since March 31, 1992. While other attorneys have been hired, the high turnover rate has resulted in a high proportion of PLS attorneys with less experience than needed . . . as of the end of March 1993, 45 percent of the PLS attorneys had less than 12 months' experience.²²

Appendices IV and V reveal the wholesale departures and failures to fill authorized slots. The PLS never matched its peak staffing level of 76 attorneys on board prior to the reorganization in the ensuing nine months. Worse, hotbeds of work, such as Dallas and Kansas City, displayed significant numbers of unfilled attorney slots.

The downsizing or put back process was undertaken by Legal Division managers "with no clearly delineated selection criteria." These "poorly conceived and poorly implemented" actions "call[ed] into question the priority RTC attached to the [PLS]

¹⁷ See *PLS Hearings* at 139-148 (Pederson); 175-179 (Taylor); 468-487 (Rebuttal Statement). Another witness before the Committee today, Tom Burnside, is expected to testify on how the reorganization adversely affected the work of the Dallas PLS Office where he was formerly employed.

¹⁸ *PLS Hearings* at 405.

¹⁹ United States General Accounting Office, *Thrift Failures: Actions Needed to Stabilize RTC's Professional Liability Program*, (June 1993) (hereinafter the "GAO Report").

²⁰ GAO Report at 21.

²¹ Motives are discussed later in this Statement. We hasten to add, however, that the methodology used by the GAO in this instance was not designed to uncover evidence of political interference. That kind of conduct is not usually reduced to paper and certainly does not appear in an agency's individual case files.

²² *Id.* at 2.

program.”²³ The put back decisions “gave little regard to the specific institutions and claims for which the attorneys were responsible.” The sixteen experienced PLS attorneys who were kicked out of the RTC were responsible for 140 thrifts with assets totalling nearly \$37 billion. GAO was amazed that “RTC would attempt to put back PLS attorneys to FDIC at a time when RTC’s PLS workload was increasing. Nothing in the extensive materials submitted by RTC at the October 1 hearing explains these actions.”²⁴

The change in PLS reporting lines also promoted the balkanization we warned of last year. According to page seven of the GAO Report:

... the restructuring lessened the direct supervisory and programmatic control over the PLS attorneys in the field. . . . The restructuring also introduced many new regional attorneys into the PLS decision-making process, some of whom lacked prior experience with the professional liability work. As a result, the decentralized PLS structure introduced the potential for fragmented program direction, inconsistent practices and decisions among the regions, and inadequate case development.”

The GAO also found differing views among field attorneys about what constituted a negligence claim against outside directors and whether headquarters was receptive to evaluating borderline cases.

With respect to the reorganization’s impact on PLS claims work, the GAO Report contains telling statistics. First, Appendix II and Figures 2 and 3 in the text display a formidable drop off in filed claims after the reorganization. Thrifts with filing deadlines after the reorganization did not suddenly contain fewer actionable claims unless relaxed standards of liability, attorney inexperience, or workload inattention due to staffing shortages began to play a role. Worse, despite touted streamlining, GAO found that RTC “continued to file many of the professional liability claims less than a week before the expiration of the statute of limitations.”²⁵

In an effort to discredit our earlier testimony, agency apologists have been quick to seize upon the GAO finding that PLS litigation policies were unchanged. This point is hardly dispositive. First, the GAO only examined seven cases,²⁶ out of hundreds of PLS matters, in arriving at that conclusion. Second, the finding that ensuing PLS decisions were “plausible litigation judgments” is no guarantee that aggressive pursuit designed to maximize taxpayer recoveries is being undertaken. “Close judgment calls” can encompass uninspired work which leaves viable claims untouched without involving legal malpractice. This is compounded by field attorney confusion on liability standards and perceptions that PLS-Washington, DC does not want to hear about borderline claims. Third, many of our concerns were not specifically addressed. Excessive use of tolling agreements and secret pre-litigation settlements were never discussed. Disrupted working relationships with RTC Investigations were left untouched as was the topic of taxpayer payment for the musical chair movement of RTC attorneys around the nation. Fourth, the GAO Report does not appear to address the serious problems that began to appear in the Dallas PLS office in March of 1993.

Finally, we believe that the spotlight of public scrutiny, namely the PLS hearings from last year, were chiefly responsible for what reforms or improvements are described in the GAO Report at page eleven. The fact that PLS has now reinstituted quarterly case reviews, increased review of close out decisions, and coordinated training attests to the fact that the Program was hurt by the reorganization. In fact, these actions actually restored valuable management tools formerly used by PLS Assistant General Counsel John Beaty. In addition, we believe that our testimony and GAO oversight served to make the RTC more aggressive in pursuit of PLS claims.

RTC OIG

The RTC OIG completed its report regarding the PLS reorganization on July 20, 1993.²⁷ The OIG Report parallels the GAO Report in many ways, although it is more detailed in its criticism of the put back process. In general, the OIG concluded that “(1) friction between PLS attorneys and the rest of the Legal Division caused by PLS’ unique reporting structure apparently was a factor in realignment staffing decisions, (2) the realignment process was poorly planned and managed, and (3) the

²³ *Id.* at 7-8.

²⁴ *Id.* at 8.

²⁵ *Id.* at 16.

²⁶ *Id.* at 9. Furthermore, GAO’s analysis on the issue of missed statute of limitations filings was not “a comprehensive review.” *Id.* at 10.

²⁷ RTC Office of Inspector General, *Review of Allegations Associated With the Restructuring of RTC’s Legal Division And Its Effect on the Professional Liability Section*, July 20, 1993 (Inspection Report INS93-005) (“OIG Report”).

realignment significantly disrupted PLS.²⁸ Our response to the OIG's failure to find evidence of an intent to disrupt the program and the conclusion that management decisions in twenty-one cases fell within the bounds of professional judgment calls is identical to the same point made in the GAO Report.

The Report points to a botched reorganization fueled by the turf war and vindictiveness.

Employees were returned to the [FDIC] despite staffing analyses showing that PLS had a continuing need for existing, as well as additional, staff to handle its workload. Staffing decisions were made subjectively and without due consideration to the effects the decisions would have on the work force or the inventory of PLS cases. Overall, PLS lost approximately 50 percent of its experienced, trained attorneys; replaced three of its top four senior field managers; and transferred 43 percent of its caseload from one attorney to another.²⁹

The methods employed in the put back process, especially in Denver and Atlanta, were most arbitrary and capricious. According to the OIG Report, "senior Legal Division managers used the process to return PLS employees they did not want without regard to the intent of the 'put back' process or the professional liability work that remained to be done." The process was subjective and poorly managed.³⁰ As might be expected under these circumstances, put back selections "were made without using criteria, standards, or guidelines and without regard for the workload."³¹ PLS recommendations to keep us in PLS were ignored and "lacked sound business purpose."³² In sum, the OIG correctly recognized that the put back process was one that should never have happened. There was a need for additional PLS attorneys before and after the reorganization.³³ Incredibly, the Legal Division managers responsible for this carnage were rewarded with substantial bonuses at the end of the year.

Press Investigations

Several interesting articles have appeared in the press which bear on our earlier PLS testimony. First, the Associated Press reported in May of this year that nationwide PLS filings were down, from about 50 percent to 33 percent.³⁴ Not coincidentally, the drop off occurred just after the reorganization of PLS. RTC's reply, that the most egregious cases were picked off for filing earlier in time is implausible and unsupported. According to the GAO Report, the RTC has historically filed most of its PLS claims days or hours before the legal deadline. The agency has been in a crisis mode for filing PLS lawsuits ever since it came into being. The GAO also noted that most of the RTC PLS work remains to be done.

A second press story provided evidence of the political interference we described in our initial testimony.³⁵ We believe that politically prominent and wealthy PLS targets nationwide have formed a powerful lobby. In their view, FDIC and RTC PLS cases against them are mere "witch hunts." RTC has argued that no politization of PLS work has ever occurred. The inability of GAO or the RTC OIG to locate documents in agency files memorializing political pressure is hardly surprising. Evidence of that activity is most unlikely to appear in that location. Those dynamics are rarely recorded in that fashion. Instead, one if left to look for circumstantial evidence. Such an example recently surfaced in former FDIC Chairman William Seidman's memoirs, *Full Faith and Credit: The Great S&L Debacle and Other Washington Sagas*. According to press reports, Mr. Seidman recounts how the Bush White House involved itself in Office of Thrift Supervision ("OTS") and FDIC handling of enforcement and PLS proceedings regarding Neil Bush. The FDIC General Counsel was later disciplined for his ensuing meddling in the pending cases.³⁶

RTC Legal Management

While hardly an objective third party, the Acting General Counsel, Richard T. Aboussie, also has made significant "admissions against interest" regarding the state of the PLS Program. In testimony before an RTC oversight Subcommittee of the House Committee on Banking, Finance and Urban Affairs, Mr. Aboussie admit-

²⁸ *Id.* at 8.

²⁹ OIG Report at 2, 7.

³⁰ *Id.* at 12.

³¹ *Id.*

³² *Id.* at 13.

³³ *Id.* at 14-15.

³⁴ Keil, Richard, "Recovery of S&L Losses Drops Off," San Francisco Examiner, May 14, 1993, at B-3.

³⁵ PLS Hearings at 460-63 (Rebuttal Statement).

³⁶ "Treasury Probe Reveals FDIC Ethics Violations," Washington Watch, May 31, 1993 at p. 1; "Lawsuit Timed to Aid Neil Bush," The Denver Post, March 26, 1993, at p. 1A.

ted to several serious problems in the wake of the reorganization.³⁷ First, PLS has had trouble filling empty slots with experienced attorneys at a time when 70 percent of PLS work remains to be done. Incredibly, the RTC actually went to the FDIC begging for lawyers to work on detail only months after driving almost half its own staff out of the program!³⁸ Second, as we warned, PLS has made heavy use of secret pre-litigation settlements. According to Mr. Aboussie, out of 389 thrifths with expired statute of limitations deadlines, about 52 percent had claims pursued or settled without litigation.³⁹ Third, little or no streamlining occurred with the touted reorganization. Mr. Thomas Hindes, the current Assistant General Counsel for PLS, testified at the same hearing that all claims are evaluated, investigated, and approved by "several layers."⁴⁰ In describing the quarterly review process, Mr. Aboussie detailed a process top heavy with managers and balkanized between field offices. Two managers from Washington join a PLS Section Chief at the field site in conducting the reviews in four of the field sites. In the other two, a different procedure is followed.

Additional Problems

Recent events also have drawn our attention to other deficiencies in the RTC PLS Program. Chief among these are the agency's failure to enlist Congressional assistance on two major fronts. These are extending the statute of limitations for filing PLS claims from three years to five years and confronting a growing number of state legislatures which are eroding the standard of liability under which the RTC (and FDIC) can bring PLS lawsuits. On June 10, 1993, we were shocked to witness the RTC actively lobby against statute of limitations extensions before the House Judiciary Committee. It is most unusual for any agency to summarily turn down increased authority to better perform its statutory mission.⁴¹ The mounting threat to the standard of liability now includes at least seven states.⁴²

VI. RTC CHAOS

While RTC management persists in its attack on us for our efforts to expose the truth about the PLS reorganization, many major programs in the RTC and their managers go unchecked. Not a month goes by without the disclosure of some new scandal or impropriety. "Rome burns" as the agency continues to spend excessive time and effort marshalling its resources against a perceived "Bruce and Jackie Problem."

Time and space constraints do not permit us to provide every instance of RTC mismanagement disclosed in the past few months. The following areas, however, are a definitive sample:

- Legal Division conflicts of interest in steering work to an Associate General Counsel's former law firm.⁴³
- The Acting General Counsel's trip to the 1992 World Series at taxpayer expense which resulted in a reprimand.⁴⁴
- Efforts by a Legal Division Senior Counsel to bill the taxpayer for over \$41,000 in legal fees incurred in defending against disbarment proceedings arising from drunk driving convictions. The OIG also found that the same person failed to disclose the conviction on his SF-171 form.⁴⁵
- Generous bonuses to management in spite of past accounts of mismanagement.⁴⁶

³⁷ *Professional Liability and RTC Contracting With Lawyers, 1993: Hearings Before the Subcommittee on General Oversight Investigations, and the Resolution of Failed Financial Institutions of the Committee on Banking, Finance and Urban Affairs, 103rd Cong., 1st Sess. (March 30, 1993) ("House Hearings").*

³⁸ *House Hearings at 7-9.*

³⁹ *House Hearings at 10.*

⁴⁰ *House Hearings at 10.*

⁴¹ See Lewis, Michael, "Limitations," *The New Republic*, August 2, 1993 at 11.

⁴² Lavelle, Marianne, "States Try Shielding S&L Execs," *The National Law Journal*, September 13, 1993, at p. 1.

⁴³ Kaplan, Sheila, "RTC Lawyer's Ties to Ex-Firm Prompt Recriminations, Probe," *Legal Times*, August 9, 1993 at 1; "RTC Lawyer's Old Firm Wins Contracts," *Rocky Mountain News*, June 29, 1993 at 39A; "Millions Flow to Government Lawyer's Old Firm," *Rocky Mountain News*, June 28, 1993 at 33A.

⁴⁴ Keil, Richard, "RTC Attorney Reprimanded for Trip," *The Washington Post*, August 3, 1993 at —.

⁴⁵ "Lawyer, RTC at Odds Over Legal Defense," *Los Angeles Times*, July 21, 1993, at —.

⁴⁶ Schmidt, Susan, "RTC Paid 136 Top Officials More Than \$1 Million in Bonuses in '92," *The Washington Post*, February 24, 1993, at p. —.

- Assorted contracting and asset sales snafus.⁴⁷
- Efforts to steer business by Acting General Counsel to a former RTC employee now working at an outside counsel law firm.⁴⁸

Other events at the RTC range from the ridiculous to the sublime. For an agency in a downsizing mode, the Legal Division continues to hire attorneys and support staff in formidable numbers.⁴⁹ Last year, the agency sponsored a cash award contest for employees for the design of a new logo. Just last month, an agency inspection determined that the RTC spends \$16,000 a day on Federal Express delivery bills. "RTC employees used overnight service for credit card payments and to send letters to family members."⁵⁰

In Denver, employees were sent to "Auditor Training" classes this past June. The purpose was to instruct employees on how to deal with auditors. The actual presentation, however, reduced the audit process to a poker game where auditors were portrayed as the enemy. Employees were advised not to volunteer information, never blame Washington, DC for anything, and told that the statement from an auditor that, "I am here to help," is a lie. Support staff were told not to worry about cooperating because they don't know the "big picture" anyway.

This past winter, during the transition period between presidential administrations, we observed significant shredding activity in the Denver Legal Division offices. Members of the Administrative Unit staff spent many hours into the evening and on weekends shredding large volumes of documents.

VII. PROPOSED SOLUTIONS

A detailed discussion of what should be done to "fix the RTC" is beyond the scope of our testimony today. We do, however, want to precipitate a fruitful discussion of what can be done to restore order to an agency that remains out of control in many ways. Each area that failed us is discussed below:

Management

A new CEO represents hope to oppressed employees that their programmatic concerns and endured retaliation will be finally heard. We trust that Stanley Tate, the new designee, will bring a critical attitude to the briefings he receives from current management, particularly in the Legal Division. There is no better way to check agency "spin control" other than to be aware of the management self preservation techniques we described earlier in Section IV. In particular, we encourage him to speak one on one with line employees without the presence of their supervisors, to contrast who received management bonuses in early 1993 with their track records, and to embrace the twin reforms of management accountability and employee protection.

Grievance System

The present grievance system ought to be junked. It serves no productive purpose. In the alternative, the RTC should consider the creation of an ombudsman office to handle these matters. The individual would be independent of management and have authority to implement his findings. In the alternative, an administrative law judge, with attendant due process protections, could be appointed to handle complaints in this area. At a minimum, the RTC ought to be required to provide reports to its key congressional oversight committees detailing the status and resolution of all grievances and EEO complaints.

OIG

The RTC OIG needs to be rehabilitated. Rank and file agency employees no longer trust this office or its leadership. Present management should either be replaced or forced to change its outlook regarding employee retaliation. The office itself would benefit from amendments to its organic statute which would clearly expand its jurisdiction to provide for proactive protection of whistleblowers. Its powers ought to be expanded to provide for active recommendation authority with some degree of enforcement. At a minimum, Congress should ensure that appropriate oversight committees receive regular reports from OIG's government wide on how management at their agency is responding to final OIG reports and recommendations.

⁴⁷ Anderson, Jack & Binstein, Michael, "RTC Troubles," The Washington Post, February 28, 1993, at —.

⁴⁸ See Exhibit 6 which is a letter from Richard T. Aboussie to James A. Clark, dated July 23, 1993. In the letter, Mr. Aboussie encourages that more work be assigned to Mr. Jeffrey North, notwithstanding an open RTC OIG investigation regarding Mr. North's post employment job search.

⁴⁹ See Exhibit 7.

⁵⁰ "Haste Makes For Waste In RTC Delivery Costs," American Banker, August 9, 1993 at —.

GAO/Congress

There is much Congress could do to reduce the incidence of whistleblower harassment. First, Federal whistleblower statutes should be amended to explicitly protect FDIC and RTC employees for their efforts to report waste, fraud and abuse. At present, where applicable, these statutes merely apply to reporting of legal violations. Many kinds of mismanagement can cost taxpayers millions of dollars yet not rise to the level of criminal violations. Merit Systems Protection Board and Office of Special Counsel jurisdiction ought to be clarified. Second, we endorse pending legislation known as the "Privacy for Consumers and Workers Act" (H.R. 1900). This bill would enhance employee privacy protections by providing them with a right to know when they are being monitored or recorded electronically while performing their jobs.

VIII. CONCLUSION

The American people deserve government officials who are sincerely dedicated to the public interest. They presently are not getting this at the RTC. There is no sense of stewardship. First came the gutting of the PLS Program which placed billions of dollars of claims at risk. Next came the waves of retaliation directed at us for attempting to speak up on behalf of the public interest. These attacks on us were paid for with tax dollars and serve to chill future whistleblowers from attempting to improve our government. All of this wastes taxpayer funds and represents callous injustice for those brave public servants conscientious enough to try and reform government operations. The time has come for management accountability and employee protection at the RTC.

* * * * *

Traveling the Crossroads: My Times at the RTC

Each of us faces many crossroads in our lifetime. A crossroads is any place you must make a difficult, personal decision which has the potential for great harm and great good. A crossroads can be a lonely and frightening place. Over the last year, I have learned that there is merit in the belief of some cultures that you meet the devil at the crossroads. I met several devils at my Resolution Trust Corporation crossroads. The most prominent were the devils of silence, fear, and greed. The first devil was others' greed for personal power, money, turf, and influence, no matter what the cost. The second devil was the echoing silence of many in the face of great wrongs. The third was my fear, and others, of losing things which were meaningful. Losing my job, career, reputation, respect of my peers, friends, home, peace of mind, health, even my future.

I was lucky. While this RTC crossroads was formidable, I did not face these devils of this crossroads alone. I also met angels in the form of my fellow citizens. These angels often appeared when and where I least expected them. They helped me to make hard, yet ethical, decisions at this particular crossroads. They supported me in my election to stand up in public and tell the tale of great harm and breach of public trust I had witnessed at the RTC. They sustained me throughout the traumatic aftermath of my decision to tell the truth rather than to quietly walk away. This has been a time which has been one of the most difficult, yet in many ways the most rewarding, times of my life. They gave me the moral courage to stick to the path of a whistleblower in the face of overwhelming and unrelenting opposition.

I do not remember when I first realized that joining the RTC as the Denver Professional Liability ("PLS") Section Chief would have a profound effect on my family and me. I came to the RTC believing that I could do something good for society, not realizing I would risk my family's welfare instead. I thought I would be able to use my years of management and legal experience to recoup significant taxpayer dollars from those persons who had destroyed many western savings and loan associations. My extensive experience in private industry would help me to make balanced decisions about real world issues. This was my opportunity to do cutting edge legal work while helping right the wrongs associated with the greatest financial crisis of our lifetimes. I did not immediately suspect that my enthusiasm to do balanced, competent legal work on behalf of the public good would be derailed in the wake of turf wars, private agendas and political maneuverings. I did not realize my world would be turned upside down and that my life would be profoundly changed as a result of the this crossroads.

When I started with the RTC in summer, 1991, I met the first of many persons who have supported me throughout the process in which I learned the hard lessons of whistleblowing. Foremost is Bruce Pederson who has been my supervisor, teacher, foxhole mate and friend. Bruce, along with John Beaty, hired me to become part

of a select group of experienced professionals dedicated to PLS work and trained me in PLS law and RTC procedures. He helped guide my PLS unit throughout the times when we worked around the clock to beat the statutes of limitations on the PLS cases. Then, he shared the pain and disbelief of those bleak days after the announcement that the PLS section was being unnecessarily reorganized, our fledgling cases precipitously reassigned and that many of us were to be summarily ejected from the RTC. He was there with me as we launched various attempts to stem the significant and costly damage of the PLS reorganization. He, along with Bradley Smolkin our other foxhole mate, shared the witness table at the August 11, 1992, Senate Banking Committee hearing. It was at this hearing that our collective concerns about severe problems at the RTC became public. It was at this hearing that our fate as whistleblowers became irreversible. Words fail me when I try to describe how much Bruce's leadership, support, and friendship throughout this process have meant to me.

There are many brave and ethical RTC employees who quietly tried to aid us in our battle to prevent the damage and help to publicize the miscarriage of justice, costly mismanagement of resources and personnel, and breach of public trust known as the 1992 RTC reorganization. Some people contributed to this struggle without apparent personal harm, but unfortunately, others became victims sacrificed in this effort. Many are no longer in the government. I cannot name all of these exceptional people for fear of reprisal against them. I can only thank them for their help. There are, however, one or two I must mention by name.

Virginia McCrae was brilliant and a dedicated PLS attorney. She was an unsung "hero" who quietly sacrificed personal advantages in order to pursue the public good. Despite negative treatment, Ginny risked her job to offer unstinting, public support to Bruce and me in this effort until her untimely death on July 3, 1992. Ingrid Anderson was another tireless PLS worker on behalf of the public good. Her reward for dedicated public service was to be removed from PLS for delivering to me EEO mail which was marked "personal and confidential." She too was casually tossed aside when her actions accidentally conflicted with personal agendas of unethical RTC management. Most recently, John Waechter has become subject to a vendetta to fire him because he told me about the secretive break in of Bruce Pederson's computer. The moral courage shown by these three ethical people in the face of extreme hostility toward them for their selfless actions has helped to sustain me throughout this last year. These are only three of the many dedicated RTC employees who suffered personal abuse because they were associated with PLS, Bruce Pederson and/or with me.

Support came throughout this Faustian event from those Denver legal employees who shared my exile from the RTC during the attempts to prematurely return us to the FDIC. These stalwart fellows known as "put-backs" shared with me the pain and disbelief of the reorganization. They too met the devils of the RTC crossroads. When they returned to functional RTC positions, they did not flinch at being seen with me in public or showing me support even though such courage was not politically correct in the eyes of RTC management.

From May, 1992 until today, public humiliation, undeserved criticism, slander, invasions of privacy, surreptitious surveillance, threats to our friends and supporters, exile to various buildings, make-work assignments, and retaliation in countless cruel and mean spirited ways have become the norm as the RTC tries to fashion a final solution for Bruce Pederson and me. We continue to plumb the depths of the whistleblowers' existence. Throughout this nightmare, however, countless RTC and FDIC employees and contractors, neighbors, friends, and even strangers have offered a kind word when I was about to give up, defended me to others when I was attacked, recognized the ethical basis of my motives and actions when management questioned my truthfulness, or smiled and made my day a little less cloudy. I cannot name them all here. I can only thank them and recognize that no one would ever have the courage to stand up for what is right, ethical, or moral, without the encouragement of people such as them.

At my crossroads, many fine and dedicated public servants employed in Congress and members of the press have stood by me and offered their support. Senators Timothy Wirth, Donald Riegle, Jr., Howard Metzenbaum, Congresswoman Patricia Schroeder and Congressman Bruce Vento are notable for their efforts to provide the public forum to disclose RTC mismanagement. I am grateful, as well, for their efforts to protect Bruce Pederson and me after we testified. Their staff members Mike Perko, Doug Nelson, Konrad Alt, Neal Peterson and Brian McTighe are simply wonderful. Many others, too many to mention all by name, have worked tirelessly with us for the common taxpayer good. I am proud and honored to have been able to participate in my small way in their efforts to oversee the business of government.

The press has been equally important in getting this tale of waste, fraud and abuse into the public awareness. When this ordeal commenced, I was afraid of reporters. I somewhat believed the conventional wisdom that the press cannot be trusted because they will misquote you and harm your story. Happily, this has not been my experience. I have worked with countless members of the press who have quoted me correctly and told my story accurately and with compassion. I am deeply grateful to them even though time does not permit naming them.

In retrospect, I, like many other whistleblowers, lightly made the decision to go public. I had witnessed a significant wrong and I wanted to tell my story to someone who could fix the problem. I naively believed that once I told my story, all would be corrected and the story would have an immediate happy ending. I was very wrong. Fortunately for me, however, Bruce and I had been accepted as clients by The Government Accountability Project. Jeff Ruch and Tom Devine carefully schooled me in how to effectively tell my account of events at the crossroads of the RTC. They gently exposed me to the truth of the long and difficult road ahead. They held my hand through all the trials of whistleblowing and guided me through testifying, press interviews and all the other circumstances of something this complex. More importantly for me, they and the other wonderful people at GAP were there when I was sure I could not go on another day in the pressure cooker environment in which I was living and working.

I must publicly acknowledge the faith, understanding and unquestioning support of April, my daughter and Bruce, my husband. Throughout this process I have risked many things which are dear to them. Like most people, I was not born wealthy. Bruce and April already had sacrificed a great deal in order for me to become a lawyer. My paycheck is necessary to my family's welfare. My decision to stand up for what was ethically and morally correct rather than remain silent has jeopardized my future employability as an attorney, and in doing so, has threatened my daughter's return to college, the security of retaining our home, the continuing financial stability of my family and has invaded our family's privacy. Despite these risks, neither of them has asked me to abandon the path I have chosen. Instead, they have supported me throughout this ordeal and encouraged me to follow my conscience, irrespective of the potential consequences to them.

Finally, I want to thank Mr. Cavallo and the Cavallo Foundation for selecting me for this award. I am awed by the feats of moral courage demonstrated by the present and past nominees and award recipients. I am honored to be included in their ranks. Mr. Cavallo is truly a man of vision to use his personal wealth to publicly support and encourage people who face these lonely and often debilitating crossroads.

I would like to conclude with a few observations borne of wrenching experience. The people I have thanked are a road map of the positive systems presently in place to sustain persons who try to tell a truth in order to serve and protect society. My story of how the public trust was breached would not have been told without these groups. While each group has been wonderful, they are still not enough. There are countless other people who presently remain silent about the wrongs they have seen because these mute people have witnessed how difficult, slow and painful the path has been for Bruce, me and for those who speak up.

Bruce and I found that many of the formal mechanisms put into place to aide us actually became methods to retaliate against us and to subvert or hide our story. Presently, Congress is looking at ways to correct these weaknesses and strengthen whistleblower protections in many forums. These initiatives must be enacted. The process needs to be overhauled and reinforced so that those persons who attempt to expose injustices are protected from retaliation. There needs to be functional systems in place to insure timely action is taken to investigate and then correct the problems exposed. It is not enough to know about injustice. Something also must be done to redress the problem in timely fashion so that the whistleblowers sacrifice does not appear to be without purpose. Like most people who decide to publicly point out that the emperor has no clothes, I risked much to tell the truth. I had hoped for a speedy resolution to the problems I had observed. That did not happen. Instead of resolution, I witnessed and experienced unabated retaliation. Somehow, the system did not work as well as it should. The story of my crossroads at the RTC, unfortunately, is not unique. Others who have shown the moral courage to speak up in the face of a serious wrong have suffered as severe or more severe consequences. This should not be. Whistleblowers efforts to inform the public need to be encouraged, protected, and supported. Otherwise people with the courage to stand up will become an endangered or extinct species.

Business

Don Knox, Business Editor — 892-5242

BUSINESS ■ 53A

Thurs., June 17, 1993

Rocky Mountain News

RTC whistleblowers win 'Courage' award

Two lawyers honored for exposing 'deliberate mismanagement of S&L cleanup' at agency

By John Rebchook

Rocky Mountain News Real Estate Editor

Don't invite Bruce Pederson and top brass from the Resolution Trust Corp. to the same party.

Pederson and fellow RTC lawyer Jacqueline Taylor have charged that RTC executives cost taxpayers millions of dollars by gutting the agency's Professional Liability Section.

In return, RTC officials publicly criticized the two, threatened their jobs and even broke into Pederson's personal computer files.

But at a soiree last week in Washington, D.C., the pair were appreciated — and rewarded. They received the national Cavallo Prize for Moral Courage and split a \$10,000 prize for "exposing deliberate mismanagement of the S&L cleanup," although RTC officials continue to deny the allegations.

"It's sort of the Academy Award for whistleblowers," Pederson said.

Pederson said while the money is "obviously great," the award was more important.



Pederson



Taylor

"I don't regard my efforts as particularly extraordinary," Pederson said in his acceptance speech. "I merely did what I think was right."

Taylor, who along with Pederson testified before a congressional hearing last year, said she and Pederson have paid a high price.

"From May, 1992, until today, public humiliation, undeserved criticism, slander, invasions of privacy, surreptitious surveillance, threats to our friends and supporters, exile to various buildings, make-work assignments and retaliation in countless cruel and mean-spirited ways have become the norm as the RTC tries to fashion a final solution for Bruce Pederson and me," Taylor said.

Rep. Pat Schroeder, D-Denver, presented the award.

"The irony was not lost on her that while she was giving us the award, the funding bill for the RTC was clunking through Congress a few blocks away," Pederson said.

WRITTEN STATEMENT FROM JOHN L. WAECHTER

I would like to take a moment to thank the chairman and the committee for providing me the opportunity to testify before you today. I will be describing my beliefs of fraud, waste, mismanagement, and abuse of the United States taxpayers money being spent at Resolution Trust Corporation.

As you may already know, the Denver Legal office was recently involved in what has become known as the "ComputerGate" scandal. I'm the person who has been caught in the middle and have been labeled the "Computer Technician" by the media.

With my presence here, I know that my honest efforts will be thwarted by retaliation. I know that all my answers will be challenged by the RTC. I'm willing to accept that challenge. I'm willing because I speak as a Government servant and most importantly, a taxpayer of the United States of America. My image of the RTC has been shattered like glass, but deep down inside I can say . . . I TRIED!

The statement I'm presenting to the Senate Committee and the American Taxpayer will address the scandal and most importantly the retaliation.

PERSONAL BACKGROUND

I was raised in a subject close knit Air Force family. Family values were preached in our household. My father taught us to stand up and speak out on issues if you wanted to try and make a change. Both my parents passed away after my high school years, but I still practiced and believed in the family values I had been taught. My wife and I have a strong belief of our family values and pass this on directly to our 3 year old daughter.

After my parents passed away, I tried to finance my own way to college with some success. I started in 1982 with Mid-Continent Computers in a entry level mainframe environment. I disliked what I was doing, but I always strived to better myself. My hard work and values started to payoff. I was recognized for my talents and was promoted to Datacommunications Analyst. There, I was taught the security and privacy of others in relation to the computer industry. Breaching of security and privacy of others was not tolerated. These rules applied to all, not just the majority. The three years of this type of training has been, and always will be embedded in my conscious.

In 1985 I worked for Martin Marietta Data Systems under a contract with the Department of Energy. I carried on what I had been taught through the years. I had always been highly respected by my coworkers and because of this I was rewarded. I steadily rose to a highly respected, senior analyst. I attended a multitude of classes on computer security and proudly enforced what I had been taught.

Between 1987 and 1991, I worked for Pritronix, a national leader in the computer sales and service industry. There I began to shape and define my career goals. I received extensive training on personal computers and Local Area Networks (LAN). I received numerous awards for my skills and achievements.

In late 1991, I accepted a job with the Resolution Trust Corporation Consolidated Office.¹ I worked for the Information Services Unit (ISU) where I was given the title of Office Systems Administrator. I enjoyed the daily challenge of taking care of the network hardware and user problems. I participated in the closing of the Savings and Loans and worked many long hours and weekends. My dedication and devotion to the company was highly recognized by my supervisors of the consolidated office (see exhibit 1). I was highly depended on by my management for problem determination and resolution. In November of 1992 I transferred to the Regional Office of Information Services Unit. Because of my strong technical and leadership skills, I was immediately given the task of site management for the Regional Financial Services Center (FSC). The FSC consisted of 250 demanding users and three ISU personnel. I supervised two employees, and as a result, I assisted in managerial duties such as schedules, hiring, and performance reviews. I became known across the region as the "Answer Man" for the ISU department and was depended on for various projects locally and nationally.² Long hours and dedication to the users made the FSC ISU department a big success and was recognized around the nation. Special projects, such as hardware upgrades, software implementation was given to me by the Corporate headquarters. Management reflected my success by presenting me with an Employee award and also in my performance appraisal (See exhibit 2).

After the merger between the Resolution Trust Corporation Consolidated and Regional office, to my dismay, I was removed from the successful ISU operations of

¹The RTC consolidated office reported directly to the Denver Regional office.

²The region consisted of Costa Mesa, CA, Phoenix, AZ, Denver, CO.

the FSC. Attempts by the senior management of the FSC for reinstatement of my services failed (See exhibit 3). In November 1992, I was transferred to the Denver Legal office as a site manager. I was the only support person available for the 140+ legal staff and various other departments located in the 1225 office site. This position required a skilled and highly professional person from the ISU staff. The Legal Department was scheduled to move to a larger site by the end of January 1993. I coordinated the move of the required computer equipment and miscellaneous peripherals. Once again, I became a site manager of the Legal Department. I was highly accepted by the Legal Department and was considered a major role player in the implementation of the national software package called "RDQ." I enjoyed the challenge the Legal Department presented, and dedicated my time to them. During the time period of November 1992 and March 1993, I had never received or heard, any complaints of my service from the Legal Department.

CHRONOLOGY OF EVENTS

On March 12, 1993 I was approached by Deanna Whisman, a Legal RTC Administrative officer, and told to report to Barbara Shangraw the Assistant General Counsel of the RTC legal office. I walked over to Barbara Shangraw's office and was invited in by her. She closed the door, and immediately stated that what she is about to say is strictly confidential and not to leave her office. I acknowledged what had been said by Barbara, and she proceeded into her statement. Barbara stated that she was under the direction of "DC" to get a copy of all the WordPerfect files from Bruce Pederson, a Counsel with RTC legal division. I was shocked by the request, given the fact I knew Bruce and Barbara were involved in a conflict. I explained to her, it is nearly impossible to tell what is a WordPerfect file and what is a spreadsheet file, and I would need to copy all files to her directory. She acknowledge this. I created a directory called "BRUCE" under her own personal "HOME." I explained to her how to access the files once they were in her possession. I told Barbara to send me an Email stating exactly what she had requested (See exhibit 4a).

I spoke to Deanna Whisman after the meeting and asked her if she knew what Barbara's request to me concerned. She acknowledge that she did know. I stated to her my concern about this situation and that I really did not want to be involved. Deanna agreed, but stated the key statement from the meeting with Barbara was "DC" is making the request. I agreed with her and waited for the Electronic Mail message from Barbara. Once I had received the Email, I printed two copies, I kept one for my own records and gave one to Deanna Whisman. Deanna asked me why she was to keep a copy of this request and I stated "If I go to jail for this, I can depend on you to display your copy for the record!"

I copied Bruce Pederson's files to Barbara's directory and noticed file names called "Grievancel, Grievance2. . . etc. I decided these files were not needed by her and I tried to deleted most of them. I completed the copy of the files and notified her of completion.

After accomplishing this directive, I felt as if I had violated the privacy of an individuals rights. I finished my day at the office and went home. My wife had asked me if anything was wrong since I had been unusually quiet all night. I informed her about the situation in hopes she would volunteer to be a "Neutral" party. We both had come to the conclusion that this should be brought up to the attention of someone else at the RTC. I told my wife I would talk to Jackie Taylor, a co-worker of Bruce Pederson's about this situation.

On March 15, 1993 I informed Jackie of the situation. She advised me to report this incident to the Inspector Generals Office.

A meeting was conducted by Wayne Zigler and Bobbi Napier of the Inspector Generals Office. I was informed that this matter would be kept in strict confidentiality. During this meeting, I was assured that I had not violated any rules or regulations governing the corporation.

A leak of the investigation was brought to my attention by the IG a couple of weeks after the reporting.

RETALIATIONS

Retaliations from the above statement has been enacted upon me by both the ISU management and Barbara Shangraw. To this day, I'm still suffering retaliations that have affected not only my work environment, but also my family life.

I have been subjected to verbal harassment, removal of job duties and special tasks, false accusations, denial of overtime, ignored request and training. The following is a synopsis of the continuing reprisals along with other supporting statements.

On April 7, 1993, Michael Brent the Information Systems Administrator for RTC Denver office, issued a memorandum to ISU staff informing us of a new policy for the administration of access to personal files (See exhibit 4A).

I received oral harassment from Jim Gardell a Senior Office Systems Administrator in Denver, and Michael Brent concerning the aforementioned incident. I spoke with Bobbi Napier of the Inspector General's Denver field office to advise her of this harassment. Bobbi informed me that something had been done and if things did not improve to let her know (See exhibit 5).

On April 30, 1993, the news media printed an article about the legal investigation of the computer violation in the Denver Legal office. Management quickly notified me by Email (See exhibit 6). This prompted more verbal harassment from Jim Gardell and Michael Brent.

On May 5, 1993, Michael Brent sent an electronic mail message to inform all Denver office Network users that all computer data is the property of RTC. This made it appear as if I broke the rule of confidentiality by telling Jackie Taylor of the incident (See exhibit 7).

On May 12, 1993, I was removed from my position as site manager for the legal division under the pretext that it was "for my own good." I stated to management for the record that I disagreed with the decision to remove me from the legal division because I felt that this would appear that I was admitting guilt. This removal was prompted by Barbara Shangraw's accusation that I was a security risk and her subsequent efforts with top senior executives to have me terminated. A meeting was scheduled between Dillard Sims, a Senior Manager and Sarah King a Director of Administrative Services, to discuss the concerns of the issues of Barbara Shangraw's accusations. I advised Dillard and Sarah of the incident and informed them that I had been cleared of any wrong doing by the Denver Office Inspector General and that there was an ongoing investigation.

I was then placed at the 1225 17th St. Office Building. My job duties were not clearly defined as I was advised that this was a temporary move until the situation in the legal division had been resolved. A senior level contractor for the ISU Department was site manager for this building and I received direct orders from him. This is a conflict of RTC standards and policies.

On May 13, 1993, I met with Jim Gardell a ISU Senior Office Systems Administrator, who advised me that I was incompetent and immature, and that he had no faith in my ability. He also informed me that "he did not know what to do with me."

On May 16, 1993, another meeting was conducted between myself and Jim Gardell. Jim told me that I needed direct supervision and would be removed from the 1225 office and would be sent to the Park Central Office by May 18, 1993. The ISU staff was informed by Electronic Mail of this move (See exhibit 8). I informed Jim that I felt that was a retaliatory action by management.

On May 17, 1993, I met with Dillard Sims and Sarah King who stated to me that they did not feel that my removal from the legal division was warranted but they were forced to remove me for my personal welfare. They also expressed their appreciation for my job performance. I expressed to Mr. Sims and Ms. King that Jim Gardell had informed me earlier in the day, that I would be relocating to Park Central and he did not feel I was doing a good job. Ms. King told me that there must be a misunderstanding concerning this move as she has just spoken with Jim Gardell and Michael Brent. I informed the Inspector General of this alleged move and stated that it was in retaliation. The IG agreed and stopped the move. I was also advised at this time of Barbara Shangraw's further allegations that I sabotaged the phone and broke into an office that held Bruce Pederson's personnel files.

On June 15, 1993, an investigation was held by the Inspector General's office of the Treasury Department (See exhibit 9). I met with Larry Glisner who informed me that I had not broken any rules or regulations and that no retaliation acts should occur.

On July 7, 1993, an Email was sent to a manager of the Legal Department apologizing for the poor support that had been relevant to all of the Legal Department (See exhibit 10). The manager was promised half day support of all of the 160 users. Lack of expertise was a major concern of the site. A Office Systems Technician (lower grade) was put in charge of site management.

On July 21, 1993, a national news broadcast was aired concerning ethical dilemmas in the workplace. After the airing of this show my job responsibilities and communication from management had almost ceased to exist. My access rights to the Inspector General computer server was deleted. A special national contract project was removed from my authority and given to a technician.

During this period I volunteered for overtime to help assist other ISU staff in a large move project. No response was ever given to my request. The ISU staff complained to me of not having adequate help for the move.

On August 17, 1993, I received a memo from Jim Gardell notifying overtime weekend coverage at the Republic Office (See exhibit 11). All Contract System Administrators and RTC System Administrators were included on the list except myself. Technicians were also excluded due to lack of experience.

On August 24, 1993, I received a telephone call from Jim Gardell who informed me that he had found a security problem on a network server log. He accused me of entering the ISU server for administration rights. Jim badgered me about the situation and told me that it would look badly for me given my prior situation. I explained that after the removal of my legal office login it was not possible for me to access a required program used by all ISU staff. I had created a new login that did not have the necessary access rights required for this program. I attempted to add myself and failed. Immediately I informed the ISU help desk whom in turn granted my access. I asked Jim Gardell if I were cleared of this accusation and he informed me that it would be up to Michael Brent, although I had once again not done anything wrong. I requested training from Jim Gardell and was informed that I would never receive additional training. When I confronted Jim about no communication between management and myself either verbal or written in a period of one month, Jim corrected me and stated that it had been more than eight weeks. I also confronted Jim regarding projects being removed from me and was told that I would not be undertaking any new projects as he did not trust me. I was also advised that I would not be eligible for any overtime. Feeling frustrated I expressed to Jim that I would be filing a grievance and he laughed and asked me "For what, lack of communication?".

On September 16, 1993, I informed Dillard Sims of my ongoing problems with management. I requested his prompt attention to this matter and advised him I would be preparing a grievance. This action prompted the removal of the ISU contractor from the building that I currently occupy (See exhibit 12). A RTC employee now assists myself and a technician to assist 180 users (See exhibit 13).

CLOSING

I made the mistake of trusting Barbara Shangraw's knowledge of professional ethics and morals not only because of her senior level position, but because I assumed she was a competent lawyer. This judgment call has caused a great deal of suffering to me and most importantly, my family. My family continues to support my decision thus helping me create a sound commitment to the taxpayer.

Last but not least, I would like to enlist your support in helping to resolve the disaster currently inflicted not only upon myself, but upon those who spoke in front of you today. I thank you for your support and to thank the many others who support and stand behind me, and my family.

ANNUAL PERFORMANCE APPRAISAL
(Evaluation of Employee Performance for GG-9 and Above Positions)

NAME OF EMPLOYEE John Weachter	TITLE AND GRADE Office Systems Admin. LG11	ORGANIZATIONAL UNIT FDIC/RTC Information Services	
PREPARED BY (Signature) <i>John A. Ritten</i>	TITLE AND GRADE Info. Services Admin. LG13	ORGANIZATIONAL UNIT FDIC/RTC Information Services	
WORK RELATIONSHIP TO EMPLOYEE		PERIOD COVERED BY THIS EVALUATION	
<input type="checkbox"/> IMMEDIATE SUPERVISOR <input type="checkbox"/> OTHER (Explain)		FROM	TO
		MO. DAY YR.	MO. DAY YR.
		11 19 90	05 19 91

TO THE RATER

The information on this form serves as the annual performance evaluation and an element in ranking candidates for positions announced under the Merit Promotion Plan. Return the original to the Office of Personnel Management for filing in the employee's Official Personnel Folder. Also, if the employee indicates that a copy should be placed in his/her Merit Promotion File, send a duplicate copy with the original to the Office of Personnel Management. It is important that narrative comments be made to clarify each assigned numerical rating. Rank each element with the number of statement below that best describes the employee's performance:

- (1) The employee's performance exceeds your expectations to such an extent that it warrants special recognition. (These ratings should be illustrated by examples.)
- (2) The employee has demonstrated ability to a degree that is clearly above that expected of a competent employee and you are confident that he/she will continue to perform at this level.
- (3) The employee has demonstrated ability to the extent expected of a competent employee and you would recommend him/her for another position in which the ability is important.
- (4) The employee's performance is acceptable, but reflects some weaknesses that can be overcome within a period of six months to a year.
- (5) The employee's performance exhibits definite weaknesses that cannot be corrected within a period of six months to a year.
- (X) The employee had a limited opportunity to show ability in this respect.

After the rating is completed, discuss your evaluation with the employee so that the employee knows how he/she is meeting the job performance standards. Give the employee the opportunity to add remarks in the space provided for that purpose. The discussion can serve as a guide to the employee in realistic career planning.

PERFORMANCE

1. JOB KNOWLEDGE

- 1 a. Has breadth and depth of knowledge of general occupational field.
- 2 b. Has experience and knowledge needed for specific job.

(In narrative, describe fields of special competence and, as appropriate, comment on developmental progress and needs in current job).

COMMENTS:

John consistently demonstrates a very high level of occupational knowledge in the general and specific aspects of his job. He has several years of background experience in LAN design, installation and management. His knowledge of LAN administration practices has played a major role in helping ISU meet our service goals. Areas where John possesses expert skills are LAN and WAN telecommunications, server configuration and set up, LAN system operating software and PC hardware construction and maintenance.

EXHIBIT

TABLE

1

2. PRODUCTS

- 2 a. Turns out complete, high-quality products.
- 2 b. Produces large quantity of work, or completes projects quickly.
- 2 c. Meets deadlines.

COMMENTS:

John is very conscience about the quality of work he produces. He is thorough and precise in his approach to solving problems and developing solutions to better manage information. Project and lessons completed on time and according to specification. John came in last November during a very busy time. He immediately began to contribute towards PC configuration and installation, server configuration and software implementation. I am very pleased with the quality and quantity of John's work.

3. COMMUNICATION SKILLS

- 2 a. Displays skill in oral expression of ideas, adapting to the listener and situation, clarity of expression, effective use of language.
- 2 a. Can address groups formally.
- 3 c. Writes well: writing is clear, correct, well organized, complete, appropriate in style and language.

COMMENTS:

John is an effective communicator. He listens well and has the ability to make non-technical people feel comfortable in discussions about technical topics. He has successfully taught several CS and Sanvan network classes with consistently positive comments documented on the class survey forms by students. He regularly participates in the Super User Group meetings giving presentations and demonstrations. Writing skills need some development.

4. WORKING RELATIONSHIPS

- 1 a. Within immediate organization, gets along with co-workers, is good group worker, hears others' points of view.
- 2 b. Outside immediate organization, with respect and cooperation of peers, management officials in other parts of FDIC, in other agencies, or general public. (In narrative, state type or nature of contacts).
- 1 c. Displays a willingness and ability to train others.

COMMENTS:

John has developed an excellent rapport with his peers and superiors. His sense of humor helps to make a very stressful work environment tolerable. John follows direction extremely well. Does well with people in general, so include management, people from outside agencies and vendors.

5. JUDGEMENT AND PROBLEM SOLVING

- 2 a. Gets to the root of the problem and makes sound proposals, decisions.
- 2 b. foresees probable consequences of actions or recommendations.
- 2 c. Analyzes situations, determines issues, gathers sufficient facts, weighs alternatives and arrives at useful conclusions in studies or staff-type assignments.
- 2 d. Recognizes situations that supervisor should be consulted on or informed of.

COMMENTS:

John's problem determination and analysis skills are very strong. Because of his background and experience he's had the opportunity to see a great deal and experiment with the options. On several occasions he has offered ideas that circumvented problems and saved time. Specifically his work in configuring to System Pro servers. He has the ability to step back from a complex problem, analyze the components, weigh the alternatives and apply the right fix.

6. ADAPTABILITY AND CREATIVITY

- 1 a. Displays creativity and originality in attaining work objectives.
- 1 b. Adapts readily to changes in program direction or in procedures.
- 1 c. Gives an extra effort when the job requires.

COMMENTS:

John has adapted very well to his new job and working environment. He demonstrates a fair amount of creativity in approach his assigned tasks. John is to be especially commended for his willingness to flex and change with the work flow. He is extremely committed to the cause as was seen on June 19 when he walked from cubicle to cubicle with his 3 month old daughter searching for viruses that had infected the network. Several hours D.T. have been contributed to complete critical projects.

7. RESPONSIBILITY AND INDEPENDENCE

- 1 a. Carries out assignments on his/her own; successfully works independently.
- 2 b. Reacts with understanding to opposing views or obstacles to accomplishment.
- 1 c. Sees that necessary things get done.
- 1 d. Is dependable, in terms of presence on the job and effective use of time.
- 2 e. Accepts responsibility.

COMMENTS:

John works very well with minimal supervision. He follows through on assignments without prompting. He knows what to do and gets it done. He has effectively handled some rather intense confrontations with irate users, defusing the situation and solving their problems.

B. OTHER STRENGTHS deserving special mention

Three greatest capabilities (number and letter)

1A	4A	6C
----	----	----

EMPLOYEE REVIEW

(Record any comments you have in the space below, referring to the number and letter of the item you are discussing, or attach a separate sheet.)

I have reviewed this completed rating and it has been discussed with me. I would like a copy placed in my merit promotion file (circle one) Yes - No. (Only employees who have or expect to establish a merit promotion file in the near future should circle Yes).

EMPLOYEE'S SIGNATURE

DATE

If you wish, you may add your comments on this evaluation:

SECOND-LEVEL SUPERVISORY REVIEW

(If you are able to add significant comments based on your personal knowledge of the employee's performance, or potential, you should do so. If you add any negative comments, return the evaluation to the employee's immediate supervisor. He/she will show the form to the employee rated, and give him/her another opportunity to comment in the space above.)

My comments on this evaluation are as follows:

SIGNATURE

TITLE ASSISTANT DIRECTOR

DATE

I have reviewed the comments of the second level supervisor.

EMPLOYEE'S SIGNATURE

DATE

ANNUAL PERFORMANCE APPRAISAL
(Evaluation of Employee Performance for GG-9 and Above Positions)

RECEIVED

NAME OF EMPLOYEE John Vaechter		TITLE AND GRADE Office Systems Admin. 11	ORGANIZATIONAL UNIT FDIC/RTC Information Services																		
PREPARED BY (Signature) James Emmelrand		TITLE AND GRADE Info. Services Admin. 13	ORGANIZATIONAL UNIT FDIC/RTC Information Services																		
WORK RELATIONSHIP TO EMPLOYEE <input checked="" type="checkbox"/> IMMEDIATE SUPERVISOR <input type="checkbox"/> OTHER (Explain)		PERIOD COVERED BY THIS EVALUATION <table border="1"> <thead> <tr> <th colspan="3">FROM</th> <th colspan="3">TO</th> </tr> <tr> <th>MO.</th> <th>DAY</th> <th>YR.</th> <th>MO.</th> <th>DAY</th> <th>YR.</th> </tr> </thead> <tbody> <tr> <td>11</td> <td>18</td> <td>90</td> <td>07</td> <td>18</td> <td>92</td> </tr> </tbody> </table>		FROM			TO			MO.	DAY	YR.	MO.	DAY	YR.	11	18	90	07	18	92
FROM			TO																		
MO.	DAY	YR.	MO.	DAY	YR.																
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- (1) The employee's performance exceeds your expectations to such an extent that it warrants special recognition. (These ratings should be illustrated by examples.)
- (2) The employee has demonstrated ability to a degree that is clearly above that expected of a competent employee and you are confident that he/she will continue to perform at this level.
- (3) The employee has demonstrated ability to the extent expected of a competent employee and you would recommend him/her for another position in which the ability is important.
- (4) The employee's performance is acceptable, but reflects some weaknesses that can be overcome within a period of six months to a year.
- (5) The employee's performance exhibits definite weaknesses that cannot be corrected within a period of six months to a year.
- (6) The employee had a limited opportunity to show ability in this respect.

After the rating is completed, discuss your evaluation with the employee so that the employee knows how he/she is meeting the job performance standards. Give the employee the opportunity to add remarks in the space provided for that purpose. The discussion can serve as a guide to the employee in realistic career planning.

PERFORMANCE

1. JOB KNOWLEDGE

1. a. Was breadth and depth of knowledge of general occupational field.
2. b. Was experience and knowledge needed for specific job.

In narrative, describe fields of special competence and, as appropriate, comment on developmental progress and needs in current job.

COMMENTS:

John's background as a systems engineer and certified Banyan Vines Administrator clearly qualified him as an Office Systems Administrator. His knowledge of network design, configuration and implementation has contributed greatly to the expansion and enhancement work we have engaged in the past year. John's technical skills is one of his greatest assets. John has been successful at resolving all technical challenges he has faced in managing the 250 user network at the Financial Operations Office. John has developed his technical skills to a level where he is ready to shift his focus to more of a supervisory role.

EXHIBIT

2

OFFICE MEMORANDUM

Resolution Trust Corporation

MEMORANDUM TO: Sara King, Director Department of Administrative Services
Denver Office

THROUGH: Roger Schwierjohn, Acting Assistant Director, Asset Operations
Financial Service Center

FROM: Ruth Ann Oliver, Department Head, Automation/Conversion,
Asset Operations
Financial Service Center

DATE: November 6, 1992

RE: John Waechter

CC: Kim Carlson

As you may be aware, Asset Operations has had extensive problems with the Banyan network since our move to Republic Plaza. Asset Operations develops systems that are used throughout the western geographical area. Because of our development activities, our network needs and support from ISU are complex and critical. John Waechter is the most knowledgeable person in ISU related to our systems and network needs. Since Asset Operations' move to Republic four weeks ago, we have had diligent support from the ISU staff to rectify our network problems. However since the ISU personnel assigned to Republic do not have the knowledge that John has of our systems, we continue to have problems.

John Waechter was at Republic yesterday and was able to solve the network problems I was experiencing with my system. This took him about five minutes on problems that I have been dealing with for four weeks. John is highly regarded by everyone in Asset Operations, and we sorely miss his presence at Republic. ISU is very fortunate to have someone of John's caliber as a member of its staff. I only wish that John could work with us on an ongoing basis. We still have network problems which we are confident that John could solve for us within a matter of days.

RTC NON-PUBLIC INFORMATION

EXHIBIT

3

707 17th St., Suite 3000 • Denver, Colorado 80202 • 303-291-4000

Document number

5. OTHER STRENGTHS deserving special mention

John continues to be a valuable asset to the Corporation. He is a very hard worker and can be counted on to complete any task given to him. His great sense of humor is especially appreciated. He has proven himself to be an excellent member of our network support team and he appears ready to take on additional supervisory type assignments. His work ethic is an excellent role model for other employees in the Corporation.

Three greatest capabilities (number and letter)

1b	6c	7e
----	----	----

EMPLOYEE REVIEW

(Record any comments you have in the space below, referring to the number and letter of the item you are discussing, or attach a separate sheet.)

I have reviewed this completed rating and it has been discussed with me. I would like a copy placed in my merit promotion file (circle one) Yes - No. (Only employees who have or expect to establish a merit promotion file in the near future should circle Yes).

EMPLOYEE'S SIGNATURE

DATE

If you wish, you may add your comments on this evaluation:

I ENJOY THE DAILY CHALLENGE THAT MY POSITION GIVES.

SECOND-LEVEL SUPERVISORY REVIEW

(If you are able to add significant comments based on your personal knowledge of the employee's performance, or potential, you should do so. If you add any negative comments, return the evaluation to the employee's immediate supervisor. He/she will show the form to the employee faced, and give him/her another opportunity to comment in the space above.)

My comments on this evaluation are as follows:

SIGNATURE

TITLE

DATE

I have reviewed the comments in the second level supervisor

EMPLOYEE'S SIGNATURE

DATE

5. JUDGEMENT AND PROBLEM SOLVING

- 2 a. Gets to the root of the problem and makes sound proposals, decisions.
- 2 b. Foresees probable consequences of actions or recommendations.
- 2 c. Analyzes situations, determines issues, gathers sufficient facts, weighs alternatives and arrives at useful conclusions in studies or staff-type assignments.
- 2 d. Recognizes situations that supervisor should be consulted on or informed of.

COMMENTS:

John exhibits very strong problem determination and resolution skills. His in-depth knowledge of the internal operation of network servers, PCs and operating systems enable him to confront the most difficult problems with confidence. John is thorough in the analysis of problems and is good at selecting the best alternative for a solution. John almost always lets his supervisor know when there are issues that they need to be aware of. There has not been a technical problem that John has not been able to resolve.

6. ADAPTABILITY AND CREATIVITY

- 2 a. Displays creativity and originality in attaining work objectives.
- 2 b. Adapts readily to changes in program direction or in procedures.
- 1 c. Gives an extra effort when the job requires.

COMMENTS:

John has demonstrated innovation in applying systems solutions to resolve technical challenges. His knowledge of components, their functions, and a variety of products on the market has been a valuable asset to our team. John has been very eager to work long hours and put forth special effort toward meeting the goals of ISU. His contribution to EDP during support specifically in the area of telecommunications is greatly appreciated. His technical expertise has also been very helpful with a special project for the General Accounting Office.

7. RESPONSIBILITY AND INDEPENDENCE

- 2 a. Carries out assignments on his/her own; successfully works independently.
- 3 b. Deals with understanding to opposing views or obstacles to accomplishment.
- 2 c. Sees that necessary things get done.
- 2 d. Is dependable in terms of presence on the job and effective use of time.
- 1 e. Accepts responsibility.

COMMENTS:

John can be expected to complete his assignments with minimal supervision. He works well independently as well as in a team environment. John's reaction to opposing views needs improvement, possibly by taking a negotiating skills class. He is very dependable and responsible. John's efforts to support the conversion to the ITM system have been an additional responsibility that he has satisfied without needing any additional direction from his supervisor.

2. PRODUCTS

- 2 a. Turns out complete, high-quality products.
- 2 b. Produces large quantity of work, or completes projects quickly.
- 3 c. Meets deadlines.

COMMENTS:

John's work is consistently high in quality. His technical knowledge enables him to avoid costly errors resulting in system outages and interruptions to network services. John has done a superb job of keeping pace with the intensely heavy volume of transactions and requests he has to respond to. His work in delivering the FIS and PC Base connection was exceptional. Project and task deadlines have consistently been met. John's first attempt at a project is generally a final product.

3. COMMUNICATION SKILLS

- 2 a. Displays skill in oral expression of ideas, adapting to the listener and situation, clarity of expression, effective use of language.
- 2 b. Can address groups formally.
- 3 c. Writes well: writing is clear, correct, well organized, complete, appropriate in style and language. (In

COMMENTS:

John demonstrates effective communication skills in group settings, meetings, brainstorming and planning sessions. Student evaluation forms indicate effective teaching skills in the Intro to DOS and Seneca classes. John should give attention to strengthening his writing skills, perhaps by taking the writing class offered by Career Development. John has done an excellent job of effectively communicating the system needs of the Financial Operations staff. John's contributions in the form of feedback on department policies and procedures has been greatly appreciated.

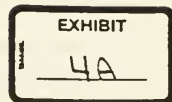
4. WORKING RELATIONSHIPS

- 2 a. Within immediate organization, gets along with co-workers, is good group worker, needs others' points of view.
- 2 b. Outside immediate organization, wins respect and cooperation of peers, management officials in other parts of FDIC, in other agencies, or general public. (In narrative, state type of nature of contacts).
- 2 c. Displays a willingness and ability to train others.

COMMENTS:

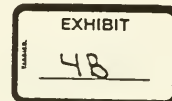
John has established good working relationship with clients, vendors, and his peers. He is highly respected for his technical expertise and sensitivity towards customer service. Several positive comments have been made by clients in appreciation of John's assistance. John has been willing to train lesser-experienced personnel in PC and network concepts. John has been excellent at immediately responding to user needs. John gets along with all of the people he works with and has built an impressive network of technical resources.

To: John Waechter@INFO@RTCDEN
 Cc:
 Bcc:
 From: Barbara Shangraw@Legal-Corp@RTCDEN
 Subject:
 Date: Friday, March 12, 1993 15:56:10 MST
 Attach:
 Certify: Y
 Forwarded by:



 I have been requested by D.C. to get into Bruce Pederson's word perfect. Please copy into a directory for me what Bruce has in his word perfect.

To: ISU
 Cc:
 Bcc:
 From: Michael Brent@INFO@RTCDENCO
 Subject: Access to personal files
 Date: Wednesday, April 7, 1993 9:35:23 MDT
 Attach:
 Certify: N
 Forwarded by:



PROCEDURES FOR FILE ACCESS

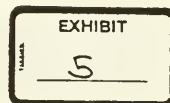
You may on occasion, receive requests from an RTC employee or Department head for access to another employee's personal files or subdirectory. DO NOT GRANT OR ALLOW ANY LEVEL OF ACCESS TO THE REQUESTOR AND DO NOT VIEW ANY FILES YOURSELF.

Inform the requestor to:

Provide a written request to Sara King or Dillard Sims. In the event that Sara and Dillard are both unavailable, have the requestor direct the written request to Kim Carlson.

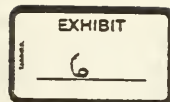
Thank you
 Michael

To: John Waechter@INFO@RTCDEN
 Cc:
 Bcc:
 From: Barbara Napier@OIG@RTCDEN
 Subject:
 Date: Thursday, April 8, 1993 11:02:06 MDT
 Attach:
 Certify: Y
 Forwarded by:



 Something's been done. If things don't improve or get worse, let me know.

To: John Waechter@INFO@RTCDEN
Cc:
Bcc:
From: James Gardell@INFO@RTCDENCO
Subject: Denver Post
Date: Friday, April 30, 1993 10:47:23 MDT
Attach:
Certify:
Forwarded by: N



John,

Did you hear about the article in the Denver Post yesterday? Its about Legal and illegal access to computers. I don't have a copy of the article but I'm sure they won't be real hard to find.

You may want to assume a low profile for the mean time. If anyone calls and ask you questions refer them to Mark Swanson 556-6513.

Tried to get you but the class was already out. At least the door was close and locked when Charlie tried to check.

Later
Jimbo

To: ***@RTCDENCO, John Waechter@INFO@RTCDEN
 Plaza Messenger@INFO-1225@RTCDEN
 REPUBLIC MESSENGER@INFO-REP@RTCDEN

Cc:
 Bcc:
 From: Denver Messenger@XNET@RTCDENCO
 Subject: File Cleanup
 Date: Wednesday, May 5, 1993 16:23:48 MDT
 Attach:
 Certify: N
 Forwarded by:



 From: Michael Brent@INFO@RTCDENCO

TO: All Denver Office Network Users

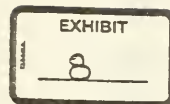
ISU requests all users to review their personal and group directories and delete all unused or unwanted files. The networks are beginning to experience sluggish performance due to the large number of files being retained on each server.

Please take a few minutes and delete the unused or unwanted files in your personal subdirectories and any E-Mails you have kept (especially those with attachments). You can print a copy of the E-mail before deleting. When deleting files a good rule of thumb is: if you haven't used it in 3 months delete it! For files you infrequently access but would like to keep readily available, you can copy or create backups onto diskettes. To reduce the time it takes and space needed to create these backups, there are data compression programs available that shrink files as much as 90%. Please contact the Help Desk (X6873) for assistance.

As a reminder to all users, every file on every server is backed up daily and monthly. These backups are stored off-site as part of our Disaster Recovery Plan. The daily backup tapes are rotated every two weeks. Friday and month end backup tapes are retained indefinitely. Additionally, all information used or created as part of doing Corporation business is the property of the Corporation. Federal agencies are required to retain permanent copies of all E-mail correspondence. Please note, RTC retains copies of all files and E-Mail correspondence even if a user has deleted the E-mail.

Your prompt attention is appreciated, thank you.

To: ISU
 Cc:
 Bcc:
 From: James Gardell@INFO@RTCDENCO
 Subject: Staffing
 Date: Monday, May 17, 1993 11:50:27 MDT
 Attach:
 Certify: N
 Forwarded by:



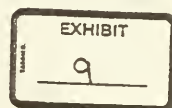
 I have staffing moves and additions to announce.

New from Anstec is Brad Crady. Brad will be performing network admin duties at Park Central. Brad comes to us fresh out of the Marines. Welcome to RTC BRAD!!!!!!

This week Gloria Jimenez will be moving up to Republic and John Waechter will move over to Park Central.

More about ARCO later.
 Thanks,
 Jimbo

To: John Waechter@INFO@RTCDEN
 Cc: Sara King@Administration@RTCDENCO
 Mark Swanson@Executive@RTCDENCO
 James Gardell@INFO@RTCDENCO
 Bcc:
 From: Michael Brent@INFO@RTCDENCO
 Subject: re: Legal investigation
 Date: Tuesday, June 15, 1993 10:19:48 MDT
 Attach:
 Certify: N
 Forwarded by:



 John,

Larry Glisner from the Treasury Department will be arriving in Denver approximately 1:00pm to conduct an interview with you. Please clear your schedule to allow for an extended time period for this process.

Mr. Glisner requested that you page him tomorrow (Wednesday) when you arrive at the office. His number is 1-800-759-7243. After entering this number enter in the PIN number 8794074.

Michael

To: Pam Johnson@Legal-Corp@RTCDEN
Cc: Gloria Jimenez@INFO@RTCDENCO
Roger M. Nicolai@INFO-1225@RTCDEN
Bcc:
From: James Gardell@INFO@RTCDENCO
Subject: SUPPORT
Date: Wednesday, July 7, 1993 13:53:58 MDT
Attach:
Certify: N
Forwarded by:

EXHIBIT

10

Pam,

I apologize for the service getting the way it is. Indeed I was already discussing with Gloria and Roger the need to better support Legal before Legal brings it to my attention. You beat me to it, but not by much.

Starting this week I will be dedicating the services of Gloria to your site for $\frac{1}{2}$ day, every day. In addition to this I am getting Gloria a portable pager so we are able to stay in touch. Roger is still part of the solution for you. He will be on call from Gloria to assist her during crunch times when needed and also back her up when she is not here.

I have also asked Gloria to rework the RLIS printer configuration that is giving you fits. It appears to be a communication problem between the printer and the server room. Gloria will be swapping out equipment to hopefully resolve this problem.

My goal is to give you quick complete service. Gloria is great at network and user support and I think you'll be quite satisfied with her assistance.

Let me know if this is OK.

Thank you,
Jim G.

To: Net Team
 Cc: MB, WL
 Bcc:
 From: James Gardell@INFO@RTCDENCO
 Subject: Weekend Coverage
 Date: Tuesday, August 17, 1993 14:07:54 MDT
 Attach:
 Certify: N
 Forwarded by: John Waechter1@INFO-1225@RTCDEN

 WEEKEND STANDBY COVERAGE
 REPUBLIC PLAZA

The people at the FSC are now working extended hours on various projects with a tight time line. In an effort to have the network up and available during these extended hours ISU has committed to having WEEKEND STANDBY COVERAGE. This coverage is limited to major network problems. It does NOT cover printer toner, software support or bad monitor. ONLY major network interruptions will be supported.

There is NO coverage on Holidays.

This coverage is for all weekends only thru November.

As stated this will be STANDBY COVERAGE. The person doing coverage for the weekend will be available via beeper (loaner if necessary). The support hours are from 8AM to 5PM. Saturday and Sunday. Once notified the person will Carbon Copy into the network to see if the problem can be resolved remotely. If not, the next step is a visit to the office to attempt to overcome th. problem (access key provided if necessary). If the problem cannot be resolved after trying all possible solutions an attempt will be made to contact Jim Gardell or Jon Bothwell for further instructions.

ACCESS via the ADMINLIST will be granted to those on standby coverage.

This email is addressed to the following. These people will volunteer for a weekend starting THIS weekend 8/21,22. First come, First serve. All responses via email.

John Appleby
 Brad Crady
 Steve Duplessis
 Gloria Jimenez
 Bob Kaes
 Roger Nicolai
 Eddie O'Callaghan
 New OSA
 Yolanda Denton (upon returning)

Jon is making sure that all necessary reference material and equipment to initiate repairs will be available. This includes a toolkit.

This coverage is well beyond the normal support we offer our users. It is ISU's intention to support these extended hours primarily because of the nature of the projects the FSC staff has committed themselves to.

Please respond ASAP so I can begin to put the schedule together.

Thanks for your continued support.

EXHIBIT

22

To: ISU
 Cc:
 Bcc:
 From: James Gardell@INFO@RTCDENCO
 Subject: STAFF CHANGES
 Date: Wednesday, September 15, 1993 15:42:36 MDT
 Attach:
 Certify: N
 Forwarded by: James Gardell@INFO@RTCDENCO

EXHIBIT

12

 Comments by: James Gardell@INFO@RTCDENCO
 Forwarded to: John Waechter@INFO-1225@RTCDEN
 Comments:

John,
 The ISU list had your old address. It now has your INFO-1225
 streettalk address.
 Jimbo

----- [Original Message] -----

Today I have announced that starting tomorrow the following staff will be
 reassigned.

Gloria is moving to the ARCO site permanently. Gloria has been taking care
 of the Legal staff and now will take up residence there.

Roger is moving to Park Central. I have been running the day to day here
 along with coordinating the global operation of the other sites. Roger will
 now take over the day to day here letting me devote full time to managing the
 global concerns of the Denver site. I think this will help all of the Network
 Team.

Harry is moving to 1225. With the lease at 1225 up in July '94 Harry has a
 big job ahead of him in coordinating the move of this network. To where is
 unknown at this time.

Thanks,
 Jimbo

To: John Waechter@INFO-1225@RTCDEN
 Harry Mason@INFO@RTCDENCO
 Lila Renteria Willard@INFO-1225@RTCDEN

Cc:
 Bcc:
 From: James Gardell@INFO@RTCDENCO
 Subject: Reporting
 Date: Friday, September 17, 1993 12:26:54 MDT
 Attach:
 Certify: N
 Forwarded by:

EXHIBIT

13

 John, Harry, Lila,

The daily operation of the 1225 site is a team effort between the three of
 you. You all have demonstrated a high degree of technical capabilities in
 solving the day to day problems and assisting the users. Normal management
 of the site is a shared responsibility between yourselves. When situations
 arise where you need the attention of upper management please call on me for
 guidance and answers. I will be glad to work with you on any of those issue.
 Thanks,
 Jimbo

STATEMENT OF ROBERT M. TOBIAS
NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

Mr. Chairman and Members of the Committee, thank you for holding this important hearing on Whistleblowers at the Resolution Trust Corporation. As the exclusive representative of Federal Deposit Insurance Corporation employees nationwide, I am well aware of the problems facing banking employees at both the FDIC and RTC. I am pleased to submit this written statement for the record.

First, let me begin by commending this Committee for the important changes that it has made to the whistleblower provisions of the Federal Deposit Insurance Corporation Improvement Act in the RTC Funding Bill. As a result of these proposed changes, FDIC and RTC employees will now be protected when they report instances of gross mismanagement, waste of funds, abuse of authority, or substantial and specific dangers to public health or safety. In addition, the proposed changes to the whistleblower provisions provide for a more equitable burden of proof for employees. These are indeed important changes which should encourage employees of the Corporation to come forward and report waste, fraud and abuse.

I believe that two other legislative changes to the whistleblower provisions of the Federal Deposit Insurance Corporation Improvement Act would enhance this legislation. The first change pertains to when a banking employee will receive coverage under the whistleblower provisions. Currently an employee receives coverage when they have made a disclosure to any Federal banking agency or to the Attorney General. We believe that this is too narrow. The Whistleblower Statute, which generally covers all employees of government agencies, excluding employees from government corporations, protects employees' disclosures to any source. Under current law, banking employees will not receive whistleblower protection if they disclose information to the media or even to Congress. It makes sense to provide the same protections to banking employees as afforded to other government personnel.

The other change which we believe would encourage more banking employees to come forward on allegations of waste, fraud and abuse pertains to attorneys fees. Currently, a banking employee who prevails on a whistleblower allegation is not entitled to attorney fees. Many employees simply cannot afford to bring forth these allegations. Moreover, other Federal employees who prevail on whistleblower allegations are entitled to attorney fees. In this current climate of escalating legal costs, it is important to provide a mechanism for banking employees to be reimbursed for meritorious legal claims.

FDIC employees consistently inform us of their vulnerability concerning whistleblower allegations. In a survey prepared by NTEU the overwhelming majority of Liquidation Grade (LG) employees (72 percent) responded that they would hesitate to report incidents of waste, fraud or abuse for fear of non-renewal of their one year appointment. A significant portion (42 percent) of LGs are aware of incidents that they believe might be waste, fraud or abuse in the liquidation of closed banks. We need to provide greater security for employees at the FDIC to ensure they feel protected enough to bring whistleblower claims.

We recognize the changing times in the banking community. FDIC has plans for a major consolidation and is downsizing its staff. The RTC will soon begin the "put back" process. During these periods of readjustments we believe it is essential that the "new FDIC" be composed of employees who feel secure in their positions. That security comes from a permanent workforce that is not constantly concerned with losing its job. OPM recently revoked the Schedule A Hiring Authority for liquidation grade employees at the FDIC. These temporary employees were charged with liquidating failed banks. NTEU consistently contended that the FDIC was abusing its hiring authority.

It is unclear what will now happen to these temporary employees. However, we would strongly urge that these temporary employees' positions be replaced with permanent positions. A temporary workforce is simply not conducive to creating an environment where employees feel comfortable enough to bring forth concerns abuses of the public trust in the workplace.

We look forward to working with this Committee and the FDIC on these important issues and changes at the FDIC.

DONALD W. RIEGLE, JR. MICHIGAN, CHAIRMAN

PAUL S. SARBANES, MARYLAND
 CHRISTOPHER J. DODD, CONNECTICUT
 JIM SASSER, TENNESSEE
 RICHARD C. SHELBY, ALABAMA
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 CAROL MOSELEY BRAUN, ILLINOIS
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ALFONSE M. D'AMATO, NEW YORK
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 ROBERT F. BENNETT, UTAH
 WILLIAM V. ROY, JR., DELAWARE
 PETE V. DOMENICI, NEW MEXICO

United States Senate

COMMITTEE ON BANKING, HOUSING, AND
 URBAN AFFAIRS

WASHINGTON, DC 20510-6075

STEVEN B. HARRIS, STAFF DIRECTOR AND CHIEF COUNSEL
 HOWARD A. MEHELL, REPUBLICAN STAFF DIRECTOR

September 29, 1993

The Honorable Janet Reno
 Attorney General
 U.S. Department of Justice
 Washington, DC 20530

Dear Ms. Reno:

Last Thursday, the Senate Committee on Banking, Housing and Urban Affairs conducted a hearing on the operations of the Resolution Trust Corporation focusing on allegations of waste, fraud and mismanagement raised by current and former employees. Senator Metzenbaum who is not a member of the Committee but has been very active in the oversight of the operations of the RTC also attended the hearing. Additionally, Congresswoman Schroeder presented testimony at the hearing.

The Committee heard stunning testimony from 13 witnesses from across the United States, including Denver, Colorado; Atlanta, Georgia; Dallas, Texas; Newport Beach and Costa Mesa, California; and Chicago, Illinois. These witnesses, who testified under oath, detailed instances of contractors overcharging the RTC or otherwise performing substandard work with incompetent personnel; duplicate or triplicate payments to contractors by the RTC; misrepresentation of sales performance by the RTC to Congress; RTC employees being reimbursed for personal travel expenses; lack of diligence in the use of administrative subpoenas to investigate potential professional liability claims, especially those involving failed Texas institutions, likely resulting in claims not being discovered and filed; questionable conduct by the RTC's Inspector General and sexual discrimination by RTC managers. Additionally, several of the witnesses testified to the retribution taken against them by RTC management for their efforts to expose wrongdoing at the RTC.

A number of the allegations made by the RTC whistleblowers raise the question as to whether actionable violations of law under your

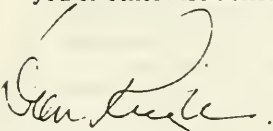
jurisdiction may have taken place at the RTC and the RTC Inspector General's office. These allegations include, but are not limited to, contracting fraud, illegal steering of contracts by government personnel for personal gain, concealment and destruction of evidence of improper or illegal activity, retaliation against whistleblowers, and knowing provision of false information to federal investigators and the Congress.

For your convenience, we are enclosing a copy of the transcript of the hearing, a copy of the written testimony submitted by the witnesses, as well as a copy of the videotape of the hearing for your review. Additionally, we are providing a copy of the witness list and the telephone numbers of the witnesses.

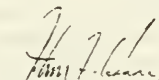
Given the serious nature of the allegations made under oath and the apparent possibility of substantial recoveries for the government, we request that the Department of Justice thoroughly review these materials in light of applicable statutes. We request that the Department place particular emphasis on matters handled by the fraud and public integrity sections of the criminal division. We also believe it is important for the Department to determine whether the potential for civil recoveries by the government may be possible against RTC contractors who may have defrauded the government, or provided substandard work. In addition, we request that after you have completed this review, that you inform the Committee of any action you deem appropriate in light of the facts provided to you and the applicable statutes.

We appreciate your attention to this matter, and look forward to your review of the testimony and related materials. We stand ready to meet with you or otherwise assist you in this matter.

Sincerely,



Donald W. Riegle, Jr.
Chairman
Senate Committee on
Banking, Housing and
Urban Affairs



John F. Kerry
Member
Senate Committee on
Banking, Housing and
Urban Affairs



Howard M. Metzenbaum
Chairman
Senate Subcommittee on
Antitrust, Monopolies
and Business Rights

Enclosures

DONALD W. RIEGLE JR. MICHIGAN CHAIRMAN

PAUL S. SARABANES MARYLAND
CHRISTOPHER J. DODD CONNECTICUT
JIM SASSER TENNESSEE
RICHARD C. SHLEBY ALABAMA
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RICHARD M. JAVAN NEVADA
BARBARA BOXER CALIFORNIA
ELIN KIGHTHOFENSE CAMPBELL COLORADO
CAROL MOSELEY BRAUN ILLINOIS
PATTY MURRAY WASHINGTON

ALFONSE M. DAMATO NEW YORK
P. L. GRAMM TEXAS
CHRISTOPHER S. BOND MISSOURI
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LAURENCE F. FORD NORTH CAROLINA
ROBERT F. BENNETT UTAH
WILLIAM V. ROTH JR. DELAWARE
PETE V. DOMENICI NEW MEXICO

STEVEN B. HARRIS, STAFF DIRECTOR AND CHIEF COUNSEL
HOWARD A. WENELL, REPUBLICAN STAFF DIRECTOR

United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

September 29, 1993

Mr. Stanley G. Tate
Tate Enterprises
1175 N.E. 125 Street
Suite 102
North Miami, Florida 33161

Dear Mr. Tate:

Last Thursday, the Senate Committee on Banking, Housing and Urban Affairs conducted a hearing on the operations of the Resolution Trust Corporation focusing on allegations of waste, fraud and mismanagement raised by current and former employees. Senator Metzenbaum who is not a member of the Committee but has been very active in the oversight of the operations of the RTC also attended the hearing. Additionally, Congresswoman Schroeder presented testimony at the hearing.

The Committee heard stunning testimony from 13 witnesses from across the United States including Denver, Colorado; Atlanta, Georgia; Dallas, Texas; Newport Beach and Costa Mesa, California; and Chicago, Illinois. These witnesses, who testified under oath, detailed instances of contractors overcharging the RTC or otherwise performing substandard work with incompetent personnel; duplicate or triplicate payments to contractors by the RTC; misrepresentation of sales performance by the RTC to Congress; RTC employees being reimbursed for personal travel expenses; lack of diligence in the use of administrative subpoenas to investigate potential professional liability claims, especially those involving failed Texas institutions, likely resulting in claims not being discovered and filed; questionable conduct by the RTC's Inspector General and sexual discrimination by RTC managers. Additionally, several of the witnesses testified to the retribution taken against them by RTC management for their efforts to expose wrongdoing at the RTC.

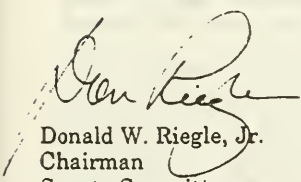
For your convenience, we are enclosing a copy of the transcript of the hearing, a copy of the written testimony submitted by the witnesses, as well as a copy of the videotape of the hearing for your review. Additionally, we are providing a copy of the witness list and the telephone numbers of the witnesses.

In light of the testimony presented to the Committee, we would urge you to take the following actions prior to your confirmation hearing before the Committee:

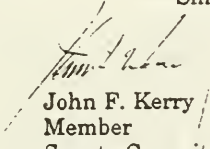
- Meet with each of the whistleblowers in person to hear firsthand the matters presented to the Committee and to have the opportunity to ask questions of the whistleblowers.
- Make a commitment to assure that these and any other whistleblowers who identify waste, fraud, abuse or mismanagement at the RTC will not be subject to retribution for reporting the wrongdoing.
- Undertake to thoroughly review and investigate all of the charges and matters identified during the September 23, 1993 hearing both as a nominee and, if confirmed, as RTC CEO.
- Inform the Committee of what management, personnel, or other changes you intend to implement to make sure that the RTC is acting in the best interests of the American taxpayer. Also, please recommend any appropriate legislative changes that the Congress should consider.

If there are other actions that you intend to recommend or undertake after you have reviewed the hearing record, please inform the Committee of those initiatives.

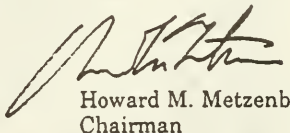
Sincerely,



Donald W. Riegle, Jr.
Chairman
Senate Committee on
Banking, Housing and
Urban Affairs



John F. Kerry
Member
Senate Committee on
Banking, Housing and
Urban Affairs



Howard M. Metzenbaum
Chairman
Senate Subcommittee on
Antitrust, Monopolies
and Business Rights

RESOLUTION TRUST CORPORATION, OFFICE OF INSPECTOR GENERAL

OCTOBER 18, 1993

Dear Chairman Donald W. Riegle, Jr., Committee on Banking, Housing, and Urban Affairs: On September 23, 1993, your Committee held a hearing during which an agent with the Office of Inspector General (OIG), Mr. Michael Koszola, testified. Mr. Koszola made a number of allegations regarding the RTC to which this letter responds.

Mr. Koszola, who testified at the hearing that he had little documentation to support his allegations, asserted that the RTC had investigated the Clinton family during the presidential campaign; had sent agents to Denver to rewrite a report involving the Bush family; and had failed to investigate allegations against the former Chief Executive Officer (CEO) of the Resolution Trust Corporation (RTC), Mr. Albert Casey. The facts on these and other allegations he made are set forth below. I respectfully request that this letter and the supporting documentation attached to it be made part of the hearing record so that the public record on this matter is complete.

CLINTON FAMILY INVESTIGATION

MR. KOSZOLA: *"Before the Presidential election in 1992, the RTC/OIG was actively seeking criminal or other negative information from RTC/OIG special agents on the Clinton family."*

There was no investigation of President Clinton or his family either prior to or after the election, nor were we otherwise seeking any information about the Clinton family. Mr. Koszola appears to be referring to an investigation we initiated following receipt of a letter, dated November 19, 1992, from you in your capacity as Chairman, Senate Committee on Banking, Housing, and Urban Affairs. In your letter, you requested that my office investigate the possible misuse of RTC resources to collect information about Presidential candidates. On July 9, 1993, we provided a copy of the Report to you. (A copy of your letter and our subsequent letter to you transmitting the Report of Investigation (ROI) are provided as Enclosure 1.)

This investigation was initiated after the election, and focused on possible RTC misconduct, as you requested, rather than on President Clinton or his family. We believe this is a perfect example of Mr. Koszola's distortion of facts. Other examples follow.

ALLEGATION INVOLVING THE BUSH FAMILY

MR. KOSZOLA: *"... top RTC/OIG officials were sent to the Denver regional IG's office in order to 'assist' other RTC/OIG special agents in writing a report of investigation involving the Bush family."*

An OIG employee did go to our Denver office for the purpose of working with a case agent to get a report rewritten. The "top" official was a desk officer (a staff position) who traveled there during the period August 5-7, 1992, to participate in preparing a report concerning RTC's involvement in the award of a contract for an effort commonly known as "Western Storm;" the report had absolutely nothing to do with the Bush family. As you know, the "Western Storm" project was the subject of considerable Congressional interest. Following meetings we had with Congressional and General Accounting Office (GAO) staff, we reviewed the draft report very carefully to ensure that all issues were fully addressed. That ROI was submitted to the Public Integrity Section of the Department of Justice on January 11, 1993.

ALLEGATIONS INVOLVING FORMER CEO ALBERT CASEY

MR. KOSZOLA: *"Sometime in mid-February, 1993, an anonymous male telephone caller stated that Patricia Patterson was buying RTC properties in Dallas as a straw purchaser for Albert Casey. . . ." Mr. Koszola testified that he provided this information to his supervisor, George Sullivan, but that no investigation was initiated.*

Allegations concerning Mr. Casey have been and are being investigated.

Contrary to Mr. Koszola's assertion that he told his supervisor of the matter concerning Ms. Patterson and Mr. Casey, he did not. In fact, we were not aware of the unsigned February 16, 1993, memorandum (Exhibit 4 to his testimony) until March 9, 1993, 3 weeks after it was dated.

Mr. Sullivan immediately faxed this document to OIG Headquarters, noting that he had not received it but had inadvertently discovered it while looking in Mr. Koszola's office for other records. Headquarters then assigned the matter to our Dallas office for investigation because of the geographic jurisdiction involved. That of-

file's investigation commenced on March 11, 1993. We met with the Public Integrity Section, Criminal Division, Department of Justice on March 17 to review the allegation and plan the investigation.

At Public Integrity's request, we maintained control of the investigation because Mr. Casey was no longer in charge of RTC. Since this is still an open investigation, we cannot comment further, even though Mr. Koszola has regrettably chosen to bring the issue out into the public.

Exhibits 5 and 6 to Mr. Koszola's testimony before your Committee are further examples of his less than candid remarks. The exhibits show that he checked with his regional office on February 17, 1993 to determine if Patricia Patterson was indexed in our system of records. The regional office responded that Ms. Patterson was indeed indexed in our system of records for an earlier 1992 case. The case does involve Mr. Casey and Ms. Patterson and an allegation different from the one Mr. Koszola raised in his testimony. Because of the nature of the indexing system, any OIG agent would know that this was an investigation opened in our Washington Headquarters Office. Mr. Koszola should have shared his allegation with that office to determine if the allegations were similar. This was not done.

The earlier 1992 case provides yet another example of a matter involving Mr. Casey which was investigated. On March 31, 1992, the RTC OIG referred an allegation concerning Mr. Casey to the Federal Bureau of Investigation (FBI) and made the Public Integrity Section aware of the referral on April 9, 1992. The OIG itself did not investigate the charge because Mr. Casey was then the sitting CEO to whom the Inspector General reports, and we wanted to avoid any appearance of a lack of objectivity. Following the FBI investigation, the Public Integrity Section declined prosecution on July 29, 1993, based on its determination that evidence was not found to substantiate the allegations. Enclosure 2 contains the letters relating to this matter.

MR. KOSZOLA: "Last year I received information that Albert Casey, the former Chairman of the RTC, was involved in obtaining a million dollar plus contract for a company in which he had a personal and possibly financial interest. The name of the company is First Gibraltar Realty Advisors located in Dallas and Irvine, Texas and the contract involved the asset management of Trans Ohio S&L, a failed thrift."

According to information we received from Mr. Koszola's supervisors, they have never been advised of these allegations. Mr. Koszola neither testified to nor provided any written evidence that he gave such notification to his supervisors. During his testimony, however, he provided a copy of a March 2, 1993, e-mail he sent to Marisha Price, an RTC employee who is not in the OIG, asking for information on First Gibraltar Realty Advisors. We never saw the e-mail before and note that no one in the OIG was electronically provided a copy of the e-mail. This is the only documentation to our knowledge which references First Gibraltar.

It should not escape notice that Mr. Koszola apparently chose to raise this issue as significant during his testimony even though he acknowledges receiving the information "last year" but apparently did not initiate investigative activity until March 2 of the following year. It is customary for an agent to reduce to writing any information that he or she receives in the course of their work. All agent activity is to be recorded in an Office of Investigation agent time tracking system under a case or complaint number utilizing various work categories. Mr. Koszola did not charge any time to such a complaint or case.

As a result of Mr. Koszola's testimony regarding First Gibraltar, my office has initiated an investigation.

OTHER ALLEGATIONS

Mr. Koszola testified that he overheard Lew Sherman and Clark Blight "making jokes" about shredding documents "all weekend" with the help of several other special agents who later received "letters of exemplary service" for their activities. The case referenced is the Jacobs matter.

Neither Mr. Blight nor Mr. Sherman nor anyone else spent all weekend shredding documents relating to the Jacobs' case (or any other matter). The documents allegedly "shredded" in the Jacobs' case are presently in our file room in Headquarters and our Denver Office, which controlled the investigation and retains our official file. These documents (thousands of pages) are available for your review.

During the Jacobs' investigation, we became aware of the existence of more than 30 boxes of records in RTC's Phoenix office. Because these boxes may have contained information or evidence concerning the matters under investigation in the Jacobs' case, we had agents travel to Phoenix to review the material in the boxes. In order to quickly accomplish this, the agents worked through a weekend and we

recognized their extra efforts with letters of appreciation. Mr. Koszola was asked to draft the letters, and it was those drafts which he submitted with his testimony as evidence that these agents were shredding documents all weekend in Washington. To the contrary, these agents were working all weekend in Phoenix reviewing, not shredding, documents. In fact two of the agents who received the letters have never been to our Headquarters office and the third served on a rotational assignment after the alleged shredding occurred.

Lastly, Mr. Koszola alleges that Messrs. Blight and Sherman joked about shredding documents relating to the Jacobs' investigation. This allegation apparently stems from the circumstances surrounding a rumor that a media reporter was inquiring about such shredding activities. The rumor was so absurd that Messrs. Blight and Sherman laughed about it in the presence of Mr. Koszola, who appears to have taken it seriously.

With regard to the shredder, itself, Mr. Koszola accurately reported that there was a shredder in his office when he arrived the morning of August 24. This was not a "borrowed" shredder but is one we own and which is normally stored in the copier room. Shredding takes place during normal duty hours in the normal course of business. We do not place material, such as old drafts or duplicate copies, in a regular waste receptacle because it would be too easy for the documents to be improperly removed. As the waste builds up, we periodically shred it. This material had been placed in the temporarily vacant office that was subsequently occupied by Mr. Koszola on August 24 and had been shredded there the prior week. The shredder was returned to storage when Mr. Koszola occupied the vacant office.

MR. KOSZOLA: ". . . I found that whistleblowers at the RTC who brought matters to the attention of the IG did not receive whistleblower protection . . . I was specifically instructed by my supervisors . . . to avoid giving confidentiality to sources."

We cannot respond specifically because Mr. Koszola did not mention anyone fitting that category during his testimony. In order to properly respond to this issue, we will need more specific information. However, we have always been and continue to be aware of our responsibilities to protect the identities of employees who come to our office with information, and have policies and procedures in place to do so.

The OIG automatically grants confidentiality to employees who furnish information during investigations. As directed by the IG Act, the identity of such employees is not divulged unless it becomes inevitable during the course of the investigation (see OIG Manual Chapter 110.3 *Confidential Sources*, Enclosure 3). However, authority to protect whistleblowers is by statute given to the Office of Special Counsel under the Whistleblower Protection Act, not to Inspectors General. We have supported amending the Act to extend application to the RTC, but Congress has not done that.

Mr. Koszola was not told to avoid granting confidentiality. Instead, his supervisors noted that almost all of the allegations he received seemed to come from "unknown sources." By their very nature, such sources cannot be contacted for additional information and their credibility cannot be established if questioned. For this reason, Mr. Sherry, his second-line supervisor, believes he discussed this with Mr. Koszola to encourage him to attempt to establish the identity of sources, even on a confidential basis, to facilitate the investigation of allegations.

MR. KOSZOLA: ". . . agents at the RTC/OIG were instructed to rewrite reports they had written . . . reports were altered in order to avoid potentially embarrassing or politically sensitive disclosures," and he was "told by Clark Blight . . . that it was the function of the Headquarters RTC/OIG to revise reports . . . to make sure they] . . . looked favorable to Congress."

Agents are instructed to rewrite reports if they are incomplete or poorly written, but not to avoid potentially embarrassing or politically sensitive disclosures. Mr. Koszola provides no specific examples of such alterations, and I am unaware of any such incidents.

Our policy on ROIs is found in OIG Manual Chapter 320.1 *Preparation, Review and Issuance of Reports of Investigation* (Enclosure 4) and contains the procedures we have established for review of reports by Regional Inspectors General for Investigation (RIGI). Mr. Koszola's supervisors, Mr. Sullivan and Mr. Sherry, are unaware of any reports, including reports prepared by Mr. Koszola, which were altered to avoid potentially embarrassing or politically sensitive disclosures.

With respect to Headquarters reviews of reports, the aforementioned policy on ROIs provides that, except for certain significant cases, the ROIs will be submitted to Headquarters concurrently with their issuance by the RIGIs to the Department of Justice or RTC management. Hence, most reports are not received in OIG Headquarters until after they have been issued. As indicated in the policy, certain re-

ports, especially those which we know have Congressional interest or implications at the national level, are reviewed at the Headquarters level prior to issuance to ensure that they *fully* address the allegations and that they are written in a professional manner. If the reports do not meet these standards, they are returned to the field for additional review and/or work. I would note, however, that fewer than 10 percent of the almost 400 ROIs issued by our Regional Offices since the establishment of the OIG have been subjected to such Headquarters review.

Mr. Koszola cites a specific example in which he alleges that Mr. Blight was in the process of "revising one such report to Congressman Gonzalez . . ." and that he "would highlight areas of reports that were already approved and request that the report be revised, rewritten, or changed to reflect a more favorable outcome." During the period of time Mr. Koszola was in Headquarters on rotational detail from August 24 through September 11, 1992, we did provide investigative material on the case involving Gerald Jacobs, former RTC General Counsel, to Congressman Gonzalez. Our ROI had been issued on August 13, 1992, before Mr. Koszola's arrival at Headquarters. Mr. Casey had sent the ROI to Congressman Gonzalez on August 20, and Congressman Gonzalez also asked for our case file. The "report to Congressman Gonzalez" to which Mr. Koszola referred was in fact a simple transmittal letter sending unaltered case material relating to the previously issued ROI to Congressman Gonzalez. (See Enclosure 5.)

Mr. Koszola testified that RTC/OIG generated false case numbers to mislead Congress by making it appear we were doing more than in actuality.

This statement is not correct. In rare instances, we have received allegations concerning the same individual or group of individuals in more than one region and complaint or investigative case files are opened in each region. When appropriate, such cases are consolidated into one case. This is not an attempt to inflate case statistics; rather, it is indicative of our comprehensive system for tracking allegations and complaints received.

Mr. Koszola testified that OIG agents were told not to tell the truth to GAO; Koszola was also told not to provide information to GAO concerning RTC employees with criminal histories.

Neither Mr. Koszola nor any other OIG employee was ever told not to tell the truth to GAO. To the contrary, the policy of this office is reflected in a July 1993, communiqué where I specifically requested that all OIG employees cooperate with GAO (see Enclosure 6).

It appears that Mr. Koszola is referring to an investigation where he was the initial case agent, but was later replaced. The investigation involved an employee of an RTC contractor who had a criminal history. The criminal history was not discovered by the contractor or RTC before the employee began working on RTC matters. Information concerning the person's history became publicly known and media interest developed. Sometime after Mr. Koszola was replaced on the investigation, our Chicago office received a telephone call from a person who identified himself as a GAO investigator located in New York. Our office was concerned that information concerning the investigation might be improperly disclosed; therefore, the Chicago office was told to direct the caller to the Assistant Inspector General for Investigation, Clark Blight, for further information. The individual did not subsequently contact Mr. Blight.

Mr. Koszola alleged that thefts of RTC computer equipment were common in every RTC office and estimated that RTC has lost over \$1 million nationwide. Further, "The RTC/OIG did not actively investigate the theft [of teleconferencing equipment worth over \$50,000] and delegated the investigation to the local police department."

I'm not sure what information Mr. Koszola used to base his estimate of \$1 million in computer thefts. We have opened eight investigations which concern the theft of RTC computers, computer supplies, or similar equipment. Three of the eight were opened by our Kansas City office, the office to which Mr. Koszola ultimately reports. Although it is difficult to place a monetary value on the equipment alleged to have been stolen in these cases, it is well below \$100,000. If Mr. Koszola has specific information supporting his belief in a more endemic problem, we would certainly be interested in learning of it.

The theft of telecommunications equipment was brought to the attention of our Chicago office on June 2, 1992. Based upon the information initially received, that office determined that investigation of the theft properly belonged with the local police department, which typically has more resources for investigating theft of property matters. The local police department opened an investigation and conducted several interviews, but has not yet identified the responsible party. The investigation still remains an open matter with the local authorities.

Mr. Koszola testified that he made both written and oral presentations to his supervisors to implement internal controls to deter thefts, but that he was rebuffed and no such controls were ever implemented.

We are not aware of oral presentations made by Mr. Koszola detailing specific internal recommendations. Enclosure 7 does relate to what might be considered a written presentation. Mr. Koszola does not mention any specific internal control recommendations but did offer to develop some. Neither of his supervisors followed up on this offer. In retrospect, we probably should have provided him with more encouragement to do so.

Mr. Koszola testified that "after one of RTC's contractors pled guilty for theft of RTC properties, I worked up the financial data on other areas of possible theft of taxpayer assets by this company and asked the Regional IG to do an audit. Despite the clear potential for additional recoveries, Regional refused to do the audit."

The "RTC contractor" was actually an employee of a thrift institution, who diverted funds from a servicing account to a checking account for his own use. Mr. Koszola prepared two memoranda for the signature of RIGI Sherry requesting audit assistance but both were devoid of a "work up [of] financial data" as he claims, and referred to open rather than closed investigations, as he implies.

The requests for assistance were not rejected by Mr. Koszola's supervisors; however, they did request more information, including an evaluation of the reasons why this matter should not be handled by investigators as a part of the open investigation, before referring the requests to the audit staff (see Enclosure 8). Mr. Koszola did not supply the requested information and it was assumed by his supervisors that he no longer needed the assistance. In any event, Mr. Koszola did not make an issue of it at the time. Requesting audit assistance is not unusual and is encouraged when that type of expertise can be used to further an investigation. Any such requests need to be evaluated, however, in order to determine the amount and extent of required assistance and the priority with which it should be pursued.

Mr. Koszola testified that he tried to investigate "reports of overbilling and sleeping on the job by employees of another RTC contractor, Coopers & Lybrand," that he "saw accountants sitting and reading non-government literature and being paid for it by the RTC." He also asserts that his supervisor failed to initiate any action when this was brought to his attention.

This matter was brought to Mr. Koszola's attention by an RTC employee, who witnessed the problem. Following preliminary review, Mr. Koszola provided verbal assurances to his supervisor that the issue had been addressed by RTC officials and managers of Coopers & Lybrand, and the matter was closed.

The "sit and read" matter was subsequently referred to in media reports and as a result we commenced an investigation on April 6, 1993. A Report was issued on July 27, 1993. The investigation disclosed that two temporary copy machine operators (not accountants) had been observed to occasionally have "down time" between copying assignments. Additionally, the investigation disclosed that the employees had been released from employment and that RTC and Coopers & Lybrand had taken reasonable steps to prevent further occurrences. Since this report has Privacy Act issues, we are not providing a copy as an enclosure to this letter at this time; however, we will provide a copy on request.

MR. KOSZOLA: *"I regularly see [legal] bills being paid by RTC without any documentation verifying that services had been performed."*

From its inception, the RTC has used the services of a number of law firms for suing directors and officers of former savings and loan institutions and to initiate other legal actions relating to assets taken over from failed institutions. When RTC was formed, its legal personnel reported to the General Counsel of the Federal Deposit Insurance Corporation (FDIC), and FDIC's accounts payable system was used to pay legal fee bills. These bills were paid after a fee bill technician reviewed the bills. However, due to the enormous volume, the processing of payments slowed, thus generating complaints from law firms and others about the delays.

To address this problem, FDIC and RTC implemented an Accelerated Payment Program. Under this program, the law firms provided certification that the bills they were submitting had not been paid. Based on that certification, the bills were paid without a review by the fee bill technician. Unfortunately, this program also resulted in duplicate payments to several law firms. During the time the Accelerated Payment Program was in effect, RTC was developing RTC's Legal Information System (RLIS) to track legal matters, case budgets, and billing information. RTC has now implemented the RLIS system which replaced the Accelerated Payment Program. Now RTC's procedures require fee bill reviews before payment. All of these facts have been reported in our Audit work (see Enclosure 9).

The OIG, using its own staff, has completed or is in the process of completing audits of eight law firms. In addition, the OIG has contracted with Independent Public Accounting firms (IPAs) to conduct audits of 50 additional law firms. The OIG is also in the process of contracting with IPAs to conduct audits of another 50 law firms. OIG audits of law firms entail reviewing the charges for propriety, accuracy, conformity with the contract terms, and reasonableness. In certain cases, our audits disclosed that law firms have charged (1) higher rates than allowed in the contract, (2) time without adequate support, (3) excessive time for legal research, (4) for employees not allowed in the contract, and (5) expenses in excess of what is allowed in the contract or without adequate support. These matters are reported to management for recoupment of overpayments.

Mr. Koszola testified that he had investigated allegations of false billing by a law firm; that, after "months of being stonewalled," by RTC's Professional Liability Section (PLS), he had obtained a grand jury subpoena to get the documents; and that the "RTC/OIG attempted to stop the subpoena from being served because it was too embarrassing to subpoena the RTC/PLS according to RTC/OIG managers."

Mr. Koszola is inaccurate in his characterization of this investigation. He was assigned this matter on January 21, 1993. On February 8, 1993, Mr. Koszola contacted Julie F. Yanda, RTC/PLS Chief, Kansas City, Kansas, and requested that all fee bills be gathered and forwarded to him for three law firms.

This was a monumental task, as the records were located in various geographical offices, and Ms. Yanda was keeping Mr. Koszola apprised of her efforts to obtain the requested documents. Even so, on February 10, Mr. Koszola told Ms. Yanda he thought she was "stonewalling" him. On February 22, 1993, Mr. Koszola faxed to an Assistant United States Attorney (AUSA) a list of documents he wanted to receive under grand jury subpoena. The subpoena was served on approximately February 24. On approximately March 15, 1993, Mr. Koszola received the subpoenaed documents from Ms. Yanda's office.

Mr. Koszola was not "stonewalled" for months. Ms. Yanda was attempting to comply with his request and was in frequent contact with him as to its status. His initial request for documents was voluminous. Even after the quantity of material requested was pared down, Ms. Yanda's office still had to copy over 12,700 pages of material to comply with the subpoena. With respect to timing, Mr. Koszola unilaterally sought the subpoena from the AUSA and the subpoena was issued and served less than two and one-half weeks after he initially contacted Ms. Yanda.

In order to better understand the sequence of events on this matter, we have provided as Enclosure 10 a Report of Interview of Ms. Yanda which was taken on May 12, 1993. Also included in the same Enclosure is a June 2, 1993, memorandum from Mr. Sullivan to Mr. Sherry wherein Mr. Sullivan outlines his concerns about the issuance of the grand jury subpoena. The memorandum references a conversation with Mr. Koszola which occurred after issuance of the subpoena and did not attempt to thwart it.

There was also no need for Mr. Koszola to request the documents from RTC under grand jury subpoena. The OIG has a right to gain access to virtually any record maintained by RTC or its contractors during the course of our audits and investigations. Documents so obtained may be used in criminal, civil or administrative proceedings. By contrast, the Federal Rules of Criminal Procedure (Rule 6(e)) place strict limits which prohibit disclosure of material obtained in grand jury proceedings. If prosecution is declined, documents obtained under a grand jury subpoena generally cannot be used in noncriminal proceedings. The OIG wants to maintain the ability to freely use evidence gathered in an investigation either civilly or administratively should prosecution be declined. These valid reasons for preferring not to use a grand jury subpoena to obtain documents are well illustrated in this case: prosecution has been declined. We now face Rule 6(e) limitations on use of documents, which were unnecessarily made a part of grand jury proceedings, should the Corporation wish to pursue civil or administrative remedies in this matter.

MR. KOSZOLA: *"The chief of the legal section was involved with one law firm that was awarded \$3 million in fees. One contract that he was in the process of awarding was \$250,000. Two days after that contract was awarded, he began employment negotiations with the firm."*

This refers to the same investigation discussed in the previous section wherein Mr. Koszola claims the RTC OIG attempted to stop a subpoena from being served. As with the previous example, his information is not accurate and is misleading. We discussed this matter with the same AUSA who issued the grand jury subpoena. He advised us that, upon receipt of the subpoenaed documents, he, met with Mr. Koszola on March 19, 1993, to review the information. At that time, the AUSA indi-

cated to Mr. Koszola that there appeared to be "no case," meaning that the allegations of criminal misconduct were not supported. It appears that Mr. Koszola knew or should have known that the above statement about the chief of the legal section was inaccurate at the time of his testimony.

Mr. Koszola testified that at the same time the OIG was ignoring major fraud cases, it was "vigorously investigating an employee who was recycling RTC trash and using the money he received to buy coffee and doughnuts for other RTC employees."

The complaint referenced here was received on July 14, 1992. Mr. Koszola conducted three telephonic interviews from August 4-5 and wrote up the results of his activity on August 7. His review disclosed there was no merit to opening an investigation and the complaint was closed. This was not a "vigorous investigation."

Mr. Koszola testified that he "saw an IG's office that would insist that agents pursue small [cases], like time and attendance cases of RTC employees. It was safer to investigate penny ante matters and to find a lower-level worker who you could show was a few hours off on his hours than to respond to the much more significant cases of waste, fraud, abuse and wrongdoing involving millions of dollars."

As of September 18, 1993, we have opened more than 700 investigative cases. Of those cases, only 10—slightly more than 1 percent—have been opened on time and attendance violations. In the meantime, our agents have been involved in cases that resulted in the indictment of approximately 100 individuals, the conviction to date of 71, and millions in fines, restitution, and monetary recoveries. This has all been accomplished by an organization that literally did not exist until early 1990.

Mr. Koszola testified that he was ordered by his supervisor to "discontinue any contact with the Senate Banking Committee."

Mr. Sullivan states that at no time did he ever tell Mr. Koszola to discontinue contact with the Senate Banking Committee. According to Mr. Sullivan, he has no knowledge of when, with whom, or what discussions, if any, Mr. Koszola had with members of the Senate Banking Committee or their staffs.

Mr. Koszola testified that, since being placed on administrative leave, he has received at least 10 threatening phone calls.

Mr. Koszola seems to imply that the OIG is somehow responsible for the phone calls. We did not make any harassing calls to him.

EXHIBITS

Although Mr. Koszola did not make this an issue during his testimony, he did include as Exhibit 10 to his prepared statement an unsigned March 15, 1993, memorandum to his supervisor concerning the removal and searching of records from his office. We believe that, since it was included, it needs to be addressed. Mr. Sullivan reports that on March 9, 1993, Mr. Koszola was on sick leave. Mr. Sullivan was looking for a document related to the "sit and read" issue discussed elsewhere in this letter. While looking for that document, Mr. Sullivan came upon a box of records which pertained to a case from which Mr. Koszola had been reassigned. Mr. Koszola had earlier been directed to turn over all documents and records in his possession concerning this investigation, so Mr. Sullivan took the box to give to the case agent presently assigned the investigation. When transferring those documents, Mr. Sullivan noticed that the box had other files, as well, which he then returned to Mr. Koszola.

ADMINISTRATIVE LEAVE

MR. KOSZOLA: *He was locked out from work for the past several months.*

Mr. Koszola has been placed on administrative leave. This matter was raised at the hearing, with the implication that this may have been some form of retaliation or harassment. In fact, as he well knows, Mr. Koszola is not on administrative leave for any reason related to retaliation or harassment. Although Mr. Koszola has raised this issue, privacy considerations prevent us from discussing it further at this time without Mr. Koszola's consent or a request from the Committee. We stand ready to respond to such a request and provide the additional information which will assist the Committee in determining the veracity of this witness and his testimony.

OTHER ISSUES

At the conclusion of the hearing on September 23, 1993, Mr. Koszola stated, "I tried to refinance my house about six weeks ago and the RTC and the FDIC have

still refused, after several written requests and oral requests, to verify that I have been employed with them . . . And they are interfering with a credit union where I already have an account to get a lower interest rate."

DONALD W. RIEGLE JR. MICHIGAN CHAIRMAN

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 LAMAR SMITH REPUBLICAN STAFF DIRECTOR AND ECONOMIST

United States Senate

COMMITTEE ON BANKING, HOUSING, AND
 URBAN AFFAIRS

WASHINGTON, DC 20510-6075

November 19, 1992

Hon. John J. Adair
 RTC Inspector General
 1735 North Lynn St.
 Rosslyn, VA 22206

Mr. Robert D. Hoffman
 FDIC Inspector General
 550 17th Street, N.W.
 Washington, DC 20429

Dear Inspector Generals Adair and Hoffman:

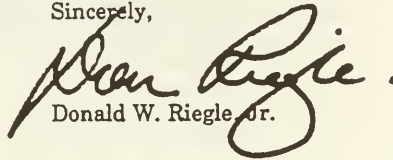
The Washington Post on November 10, 1992, in a story which I enclose for your review, reports that Ross Perot charged that Bush administration officials had violated his privacy by culling information from his Navy records as well as records with the Resolution Trust Corporation and the Federal Deposit Insurance Corporation. Earlier this year, a Houston Chronicle story, which I also enclose for your review, indicated that there may have been a misuse of government resources, including by the RTC, to collect information about Ross Perot.

Although there may prove to be benign explanations for both of these press reports, I am deeply concerned that government resources may have been utilized in a manner that is inconsistent with the mission of the RTC and the FDIC. While the press accounts are limited to potential problems identified by independent candidate, Ross Perot, I would be interested to know whether any other presidential candidates, Democratic, Republican or Independent aspirants, were also subject to any scrutiny by the RTC or FDIC.

Accordingly, I am asking each of you to report back to the Senate Banking Committee within 3 months from the date of this letter with complete

accounts as to whether during the course of the presidential election year there had been scrutiny by the RTC or FDIC of any potential candidate for the office of the Presidency. Also, I would like a full explanation of the allegations that are raised in the articles which I am enclosing for your review.

Sincerely,


Donald W. Riegle, Jr.

cc: Albert Casey, RTC CEO
Andrew Hove, FDIC Acting Chairman



OFFICE OF
INSPECTOR
GENERAL

RESOLUTION TRUST
CORPORATION

July 9, 1993

The Honorable Donald W. Riegle, Jr.
Chairman, Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D.C. 20510-6075

Dear Chairman Riegle:

You asked us to determine whether any presidential candidates were subject to any scrutiny by the RTC. Your request followed a newspaper article published in The Washington Post on November 10, 1992. In that article, H. Ross Perot charged that Bush administration officials had violated his privacy by culling information from records at RTC, as well as two other agencies.

A copy of our Report of Investigation and memorandum dated May 7, 1993 to Roger C. Altman, Acting President and CEO, are enclosed for your information.

Our investigation found that the Director, Office of Corporate Communications (OCC), and two members of his staff, received inquiries from representatives of the news media requesting information relative to the purchase of RTC assets by Mr. Perot or his related companies. The Director instructed a member of his staff to contact a Texas staff person to obtain the information. It appears that only previous press releases detailing the sale of assets to H. Ross Perot, Jr. were released. The staff also received an inquiry from the news media regarding asset sales to President Bush, and no information was found. In addition, OCC was queried by the media concerning Hillary Rodham Clinton, and a copy of the Legal Services Agreement (a public document) between RTC and Rodham Clinton's law firm may have been released to the news media.

Additionally, OCC received an inquiry from the news media pertaining to the rent payments by a tenant in a property once owned by RTC. OCC presumed that this request related to President Clinton. This inquiry was coordinated with the staff of the Freedom of Information (FOIA)/Privacy Act Branch, Office of the Secretary, who instructed OCC not to release any information regarding individual tenants, and to inform the news media they would have to file a FOIA

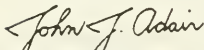
request to obtain the information. Prior to that instruction, the OCC continued to seek the information to respond to the news media inquiry. The OCC did verbally obtain the information sought, but did not release any information to the news media since they were told that a FOIA request was needed. The RTC refused to confirm or deny the existence of such records in response to a subsequent FOIA request.

It is our opinion that concerns about individual privacy were evident at the onset of the tenant inquiries. It should also have been apparent that a tenant's personal rental records were not publicly available information, which is the only information OCC is authorized to release. Therefore, no attempts should have been made by OCC to obtain the requested information, and the requester should have been immediately directed to the FOIA/Privacy Act (PA) office.

We have also enclosed a copy of a Disposition Report, signed by Mr. Altman, in which he indicated his action on this case. Mr. Altman wrote Dennis F. Geer, Vice President, Division of Administration and Corporate Relations, on July 1, 1993, directing that he review the OCC's methods of processing inquiries and develop written internal procedures to ensure compliance with statutory and corporate mandates concerning release of information. We have also enclosed a copy of Mr. Altman's memorandum to Mr. Geer.

Please call me on (703) 908-7801 if you should have any questions.

Sincerely yours,



John J. Adair
Inspector General

Enclosures

Copyright 1992 The Houston Chronicle Publishing Company The Houston Chronicle
June 26, 1992, Friday, 2, STAR Edition

SECTION: A; Pg. 22

LENGTH: 357 words

HEADLINE: Aiding in Perot probe was "routine," RTC says

BYLINE: ALAN BERNSTEIN, Houston Chronicle Political Writer; Staff

KEYWORD: Elections Presidential

BODY: The Federal Government's Resolution Trust Corp. routinely searched its Texas files for information on its own deals with Ross Perot in response to a reporter's question, an RTC spokeswoman says.

The records search, completed this month, showed that the RTC's only transactions with the likely independent presidential candidate took place last year and were described in government news releases at the time, spokeswoman Sue Brown said Thursday.

Brown said the internal examination of RTC files was conducted in response to a Washington reporter's question about RTC dealings with the Dallas billionaire.

There was nothing unusual about the records search, Brown said. The agency, which oversees the assets of failed financial institutions, would answer such inquiries about any landowner in about two weeks, she said.

Perot has charged that the Republican Party is conducting a "dirty tricks" campaign against him that includes examining his late mother's will and other public documents.

An anonymous caller identifying himself as an RTC employee and Perot supporter told the Chronicle this week that the RTC was "using government resources to try and dig up dirt about Ross Perot."

But the RTC spokeswoman said the inquiry was limited to the RTC's own records and was initiated only to answer the reporter's question. "We were just responding to a basic press inquiry," she said.

Perot's maverick candidacy has triggered widespread investigation into his background and business record by the nation's news media. Perot alleges that President Bush's campaign has joined the effort with "opposition research" and has purposely distorted his record.

Certain Federal Government files are available to reporters and others through formal requests made under the Freedom of Information Act.

But Brown said the RTC regularly responds to less formal requests such as the one that triggered the examination of files about Perot.

Last year, Perot companies purchased millions of dollars worth of Dallas-area land that had been owned by financial institutions now under RTC control.

State Dept. Aides Searched Perot's Passport File

By Michael Isikoff and Walter Pincus
Washington Post Staff Writers

Two weeks after they conducted an unusual late-night hunt for the passport files of Bill Clinton and his mother, State Department officials returned to a National Archives depository in suburban Maryland to search and retrieve the passport records of Independent presidential candidate Ross Perot, according to a National Archives memo.

The internal memo states that Richard P. McClevey, chief of the State Department's Office of Program Support, and two unnamed

department officials visited the National Records Center in Suitland on Oct. 13 "and researched the passport application files for H. Ross Perot."

The memo states that McClevey, a deputy to assistant secretary for consular affairs Elizabeth M. Tampusi, and the two other State Department officials—whose names were deleted—"removed one application and two letters from his [Perot's] company that were loose in the files."

The memo does not explain what the company letters were about or why they were in Perot's files. It

states that "other applications for Mr. Perot had been retrieved by the State Department in the early 1980s and not returned to file."

The Oct. 26 memo provides the first indication that Perot's passport records were searched as were Clinton's during the final weeks of the 1992 presidential campaign. Although the State Department has acknowledged receiving five Freedom of Information Act (FOIA) requests on Perot this year, a senior department official familiar with the requests said yesterday that none of them specifically sought information about Perot's passport records.

The Archives memo also contains no indication that the search of Perot's files was conducted in response to any FOIA request.

"It's a gross abuse of federal power," Perot said yesterday when informed of the State Department search by a reporter during a telephone interview. "Somebody ought to hold them accountable for it."

Perot said that during the campaign there was "a steady stream of government agencies going after everything they could get on me, typically under the guise of freedom of information . . . It's kids in the

800 PASSPORT, A14, Col. 3

State Dept. Aides Searched Perot Passport File

PASSPORT, From A1

playground This is just the way American politics is conducted. It's a sad commentary."

The State Department search of Perot's files adds a new element to what department officials have acknowledged was an abuse of the freedom-of-information process to hunt for politically damaging material on Clinton—conduct that has triggered separate investigations by the State Department's inspector general and the General Accounting Office.

Asked about the matter on Oct. 27, acting Secretary of State Lawrence S. Eagleburger said: "There is no question the State Department has been politicized in this campaign, and I don't like it at all

.... Some things may or may not have been done—I do not know yet and won't until the investigation is over—that were beyond the pale."

The Archives memo also raises new questions about Eagleburger's Oct. 2 decision, based on recommendations from subordinates, to request an FBI investigation into whether there had been illegal tampering with Clinton's passport files. The investigation was leaked within hours to *Newsweek* magazine, whose story fueled suspicions about Clinton's anti-Vietnam War activities two decades ago, but the FBI concluded within a few days there was no evidence to support the tampering allegation.

State Department spokesman Richard Boucher has said the concerns about tampering were raised

by deputies of Tamposi who searched through Clinton's files for 10 hours on Sept. 30 and Oct. 1. However, Archives officials had already told the department they saw nothing unusual in the Clinton files.

The Oct. 26 memo states that two of Tamposi's deputies—Carman DePiscido, then acting deputy assistant secretary of state for passport services, and Steven Moheban, a special assistant to Tamposi—told Archives officials during a visit on Oct. 8 that "they were sorry for all of the problems resulting from the search for the records."

"They stated that it had not been their decision to involve the FBI and that they did not believe that the records had been tampered with," the memo states. The memo is signed by Ferris E. Stovel, director of the National Record Center.

He declined to comment yesterday. Gary Sheaffer, spokesman for the State Department Office of Consular Affairs, said yesterday that Tamposi and her deputies would not discuss the matter. Tamposi, a political appointee, formerly worked as Republican state finance chairman in New Hampshire.

The Oct. 26 memo was among several documents obtained from the National Archives by the American Civil Liberties Union under the FOIA. A copy of the memo, along with other Archive records on State Department searches for material, was made available yesterday to *The Washington Post*.

Perot's candidacy was enmeshed during the final 10 days of the campaign in his unsubstantiated allegations that Republican "dirty tricks" operatives had plotted to smear one

of his daughters with a doctored photograph, disrupt her wedding and wiretap his business office.

When first told of the passport search yesterday, Perot said: "If I said anything about it, everybody would say I'm a paranoid investigator, wouldn't they? For all I know, that's what this is for—to get me to make a comment."

He called the search of his passport files "weird," adding: "I can't think of anything duller than my passport records."

In the interview, Perot also charged that Bush administration officials had violated his privacy by culling information from his Navy records as well as records with the Resolution Trust Corp. and Federal Deposit Insurance Corp.

When the State Department's search for records on Clinton was

disclosed last month, department officials said it was conducted in response to three FOIA requests from news organizations seeking information on the Democratic presidential nominee received in September. But department officials later acknowledged those requests had been improperly expedited.

This prompted the Nation magazine to file a suit over the department's failure to process an FOIA request filed by one of the magazine's editors three months earlier—on June 22—for material on Perot. In an affidavit filed in response to the suit on Oct. 19, Frank M. Machak, the department's information and privacy coordinator, made no mention of the Oct. 13 search by McClevey for records on Perot.

Washington Post
11/1/92



Resolution Trust Corporation

March 31, 1992

Mr. Robert M. Bryant
Special Agent in Charge
Washington Metropolitan Field Office
Federal Bureau of Investigation
1900 Half Street SW
Washington, DC 20535

Subject: Albert V. Casey (Chief Executive Officer)
Resolution Trust Corporation
Washington DC
Patricia M. Patterson (Borrower)
Dallas, Texas
Our file: WA-92-0012

Dear Mr. Bryant:

We have received an allegation involving Albert V. Casey, Chief Executive Officer, Resolution Trust Corporation. The allegation involves a potential violation of 18 USC 1014 and 2. Since Mr. Casey is a Presidential appointee and the head of this agency, we are forwarding the matter to you.

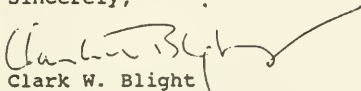
The allegation was received through our Hotline on March 27, 1992. The enclosed "Record of RTC OIG Hotline Call" documents the allegation. An anonymous caller alleged that Mr. Casey telephoned Hugh McColl, President, NCNB (now Nations Bank) to use his position to influence the treatment of a foreclosure on a loan to Patricia M. Patterson, who is purportedly Mr. Casey's "girlfriend." The caller alleged that Ms. Patterson's loan was restructured, saving her \$500,000. The caller alleged that Ms. Patterson has significant assets which were "covered-up" in restructuring this loan. In addition, it is alleged that forgiveness of the debt was not reported to the IRS.

The Patterson loan appears to have been renegotiated through AMRESKO, an NCNB subsidiary which handles the institution's bad assets. AMRESKO is an RTC contractor.

Mr. Robert M. Bryant
Page Two
March 31, 1992

We request that you advise us of the results of your inquiry. Please call me on (703)908-7860, if you have any questions or need assistance.

Sincerely,


Clark W. Blight
Assistant Inspector General
for Investigation



April 9, 1992

Mr. William A. Keefer
Acting Chief
Public Integrity Section
Department of Justice
P.O. Box 27321, Central Station
Washington, D.C. 20038

Dear Mr. Keefer:

We have received an allegation involving Albert V. Casey, Chief Executive Officer, Resolution Trust Corporation (RTC). This letter is to advise you of this matter, since Mr. Casey is a Presidential appointee and head of this agency.

In view of Mr. Casey's status, we forwarded the matter to the Federal Bureau of Investigation (FBI), Washington Metropolitan Field Office. Enclosed is a copy of our correspondence with the FBI.

Should you or members of your staff have any questions, please call me on (703) 908-7860.

Sincerely,

A handwritten signature in cursive script, appearing to read "Clark W. Blight".

Clark W. Blight
Assistant Inspector General
for Investigation

Enclosure

cc: Mr. Robert M. Bryant
Federal Bureau of Investigation



U. S. Department of Justice

Washington, D.C. 20530

JUL 29 1993

Mr. Clark W. Blight
Assistant Inspector General
for Investigation
Office of Inspector General
Resolution Trust Corporation
1735 North Lynn Street
Rosslyn, Virginia 22209

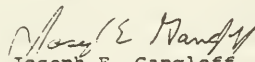
Dear Mr. Blight:

You referred to the Public Integrity Section anonymous allegations concerning Albert V. Casey, the former Chief Executive Officer of the Resolution Trust Corporation and Patricia Patterson, a Texas businesswoman who is Casey's companion. These allegations centered on Casey's use of his influence to secure a loan renegotiation for Patterson.

We are closing this matter because investigation has failed to substantiate the allegations. Should your office become aware of further information relevant to the investigation, please feel free to refer that information to us as well.

Thank you for your assistance with this matter.

Sincerely,


Joseph E. Gangloff
Acting Chief
Public Integrity Section
Criminal Division

cc: Special Agent Janis Famous
Federal Bureau of Investigation

Thomas F. Cusick
Financial Crimes Enforcement Network

**RESOLUTION TRUST CORPORATION, OFFICE OF INSPECTOR GENERAL
POLICIES AND PROCEDURES MANUAL**

PART: I. Operations Policies and Procedures.

SECTION: OIG-130 General Management Policies and Procedures.

CHAPTER: 110.3 Confidential Sources.

1. *Purpose.* To provide policy and guidance on Office of Inspector General (OIG) Confidential Sources (CS) and relating confidential documents.

2. *Definitions*

a. *Confidential Source.* Any person who provides information to the OIG on a confidential basis.

b. *Complainant.* Any person who makes a complaint to the OIG concerning the possible existence of fraud, waste, or mismanagement affecting the Resolution Trust Corporation's (RTC) programs and operations. There are three types of complainants.

(1) *Employee Complainant.* Any RTC employee who makes a complaint to the OIG.

(2) *Public Complainant.* Any person who is not an RTC employee who makes a complaint to the OIG.

(3) *Anonymous Complainant.* A person who makes a complaint without disclosing his/her identity.

c. *Witness.* Any individual, including an RTC employee, who provides information or evidence; who testifies or is asked to be present at a transaction to testify to its having taken place; or who has personal knowledge of something as evidence or proof.

d. *Contact.* Generally, the Contact is the OIG staff member responsible for having initially developed the CS. Contacts may introduce an alternate OIG Contact to the CS.

3. *Legislative Provisions*

a. The Inspector General Act of 1978, as amended (5 U.S.C., App. 3, Section 7) states the following:

(1) The Inspector General may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.

(2) The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(3) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

b. The Whistleblower Protection Act of 1989 does not apply to the RTC. However, reprisals against RTC employees for reporting fraud, waste, or mismanagement to the OIG violate the Inspector General Act of 1978, as amended. Furthermore, such action constitutes a violation of RTC's ethics provisions, RTC Circular 2410.1, Standards of Ethical Conduct for RTC Employees.

4. *Policy*

a. The responsible Assistant Inspector General (AIG) may designate an individual as a CS when conditions warrant such a designation. The AIG may delegate this authority to senior OIG managers in the field and headquarters, as appropriate. However, complainants and witnesses differ in their rights to confidentiality. The following is OIG policy regarding confidentiality for the three types of complainants and for witnesses:

(1) *Employee Complainants.* Pursuant to the Inspector General Act of 1978, as amended, all RTC employee complainants automatically have confidential status unless they waive it by consenting specifically to allow OIG to use their identities. Confidentiality may also be waived by subsequent actions by the complainant. A case-by-case determination as to such waivers must be made in consultation with OIG Counsel.

(2) *Public Complainants.* Confidentiality should not be provided to public complainants unless they specifically request it.

(3) *Anonymous Complainants.* Anonymous complainants cannot be treated as confidential sources because their identity has not been disclosed to the OIG. However, in receiving their complaints, the OIG Contact should ask anonymous complainants to identify themselves in order to facilitate an OIG inquiry. If identification is given, the complainant should be treated as appropriate under subparagraph 1, 2, or 4.

(4) *Witnesses.* Confidentiality should not normally be provided to witnesses regarding information they submit in response to questions concerning an official inquiry. However, if the witness initiates a complaint regarding a different matter, confidentiality may be granted to the witness for that information only if the witness is an RTC employee or requests confidentiality.

b. A Contact may ask a CS to provide information already in his/her possession, or to provide information which comes to his/her attention concerning subjects of authorized OIG activity.

c. It should never be expressed or implied to a CS that his/her identity will never be released. The OIG staff shall not disclose the identity of any CS without the individual's consent, unless the Inspector General determines such disclosure is unavoidable during the course of an audit or investigation.

d. Efforts should be made to independently verify the information provided by a CS without jeopardizing the confidentiality of the CS.

e. The Contact should be alert to any situation that might be construed as an abuse of the CS's status and, if necessary, inform the CS of the following:

(1) The assistance of the CS is strictly voluntary;

(2) The CS's relationship with the OIG will not protect him/her from arrest or prosecution for any violation of Federal, state, or local law; and/or

(3) The CS supply of information to the OIG does not make him/her an OIG employee, nor should such a status ever be claimed by the CS.

f. In carrying out any request, the CS will not be encouraged or requested to participate in any acts of violence, initiate or instigate a plan to commit criminal acts, or use unlawful techniques to obtain information.

g. When a CS learns that persons involved in an OIG case intend to commit or participate in a crime, or to cause harm to RTC's programs and operations, the CS is encouraged to immediately notify the OIG Contact or alternate.

h. No member of the OIG will disclose the identity of a CS without authorization from Inspector General, pursuant to the Inspector General Act of 1978, as amended (5 U.S.C., App. 3, Section 7 (b)).

5. *Procedures.* Each AIG is responsible for ensuring that, once approved, a CS's identity remains confidential. The AIG, or designee, is responsible for the following procedures.

a. *Designating CS*

(1) The Contact should direct a written request to the responsible AIG, or designee (if appropriate), for authorization to designate an individual as a CS. If the written request is mailed, only registered mail or overnight mail should be used. The written request should include the full identity of the CS with as much background information concerning the individual as possible and a brief justification for using the individual as a CS. The procedures for recording hotline information (Paragraph 6. c.), outlined in our Hotline policy, OIG Policies and Procedures Manual Chapter 110.2, satisfy these requirements. At most, only an original and one copy of the written request should exist; no copies should be maintained in the case files or workpapers. The responsible AIG, or designee, should maintain the original and, if made, one copy in locked safes.

(2) If approved, the AIG, or designee, will assign, from their numerically sequenced CS log, a designation code that will be used to refer to the CS. The designation code should identify the OIG office, followed by CS to note that the source is confidential and then a sequential number (e.g., ATL-I/CS/01 stands for OIG Office of Investigation, Atlanta's first CS). The log, which must be secured in a locked safe, should contain the true identity of the CS, designation code, case/assignment number, and Contact's name.

b. *Maintaining the Source's Confidentiality.* CSs must not be identified by name, gender, or other telling information which may lead another to deduce a CS's true identity. Any reference to the CS should be by the designation code only. This applies to all written communication—from preparing internal papers (i.e., case files, work papers, etc.) to issuing relevant documents (i.e., reports, memorandum).

6. *Contact.* Questions regarding OIG guidance on this policy should be directed to the AIG for Policy, Planning and Resources.

The exhibit identification will be stamped at the bottom right of each exhibit page, whenever possible. Otherwise, the stamp will be placed on the exhibit page wherever most convenient.

6. *Review and Issuance of the ROI*

a. *Review by the RIGI or DAIGI*

(1) The RIGI, DAIGI (Headquarters), or his/her designee is responsible for reviewing and approving each ROI before it is issued by that office. The review should be conducted to ensure that acceptable standards for investigative activity have been met and that the ROI accurately reflects the results of the investigation. Special care should be taken to ensure that all investigative leads have been addressed and that appropriate support exists for the information reported. Additionally, the reviewer should ensure that the report is written clearly and concisely, without opinions of the writer, and that the report is free of spelling, grammatical and punctuation errors.

(2) Typically, a copy of the ROI will be submitted to the DAIGI (Field) at the time it is issued. On a case-by-case basis, depending upon the sensitivity or significance of the investigation, the Assistant Inspector General for Investigation (AIGI) may require that a copy of the ROI be submitted to the DAIGI (Field), prior to issuance.

b. *Issuance of ROI for Prosecutive Consideration.* ROIs issued for prosecutive consideration should be accompanied by a transmittal letter from the RIGI or DAIGI (HQ) to the responsible prosecutor. The RIGI or DAIGI (HQ) should follow up periodically, if needed, until a prosecutive decision has been reached.

c. *Issuance of ROI to RTC Management.* ROIs issued to RTC management should be sent with a transmittal memorandum from the RIGI or DAIGI (HQ) and a blank Disposition Report (DR) (Attachment C). Within 60 days of issuance, the DR should be completed by management and returned to the RIGI or DAIGI (Headquarters).

(1) Distribution of the ROI will vary depending on the subject matter, as outlined in paragraphs 6.c.(2) through 6.c.(6). In addition to issuance of the original ROI and DR, copies will be provided to the Director, Office of Administrative Evaluation, RTC, Washington, DC, for appropriate routing to the various offices required to take action. The offices which are to receive these copies should be identified in the memorandum used to transmit the original ROI to management.

**OFFICE OF
INSPECTOR
GENERAL**

**RESOLUTION TRUST
CORPORATION**

September 11, 1992

Honorable Henry B. Gonzalez
Chairman, Committee on Banking, Finance
and Urban Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

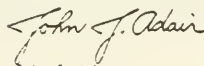
You recently sent a letter to Albert V. Casey, President and CEO, Resolution Trust Corporation (RTC), asking for the Report of Investigation and complete case file of our investigation of former RTC General Counsel Gerald L. Jacobs.

Mr. Casey sent you the Report of Investigation on August 20 and explained that the balance of the material requested, the complete case file, entailed a substantial volume of material which my office would provide. A copy of much of the material generated or accumulated during our investigation is enclosed. These documents contain material which is not subject to disclosure under the Freedom of Information Act, and is provided for your use as Chairman of the House Committee on Banking, Finance and Urban Affairs.

We still have a substantial volume of material, largely records of Western Savings and Loan Association, which we reviewed during our investigation and are prepared to provide to you. However, because of the large volume of material (approximately 36 file boxes) and the nature of some of it (personal income tax returns, etc.), we would like to meet with you or your staff to discuss our investigation and arrange delivery, if necessary, of this additional material.

We would appreciate being contacted by a member of your staff to arrange such a meeting. In the meantime, should you or members of your staff have any questions, I am available to discuss this matter. I may be reached on (703) 908-7800.

Sincerely yours,



John J. Adair
Inspector General

To: *@IG@RTCDC, *@IG1@RTCDC, *@IG2@RTCDC, *@IG3@RTCDC, *@IG@RTCATLSOU,
 *@IG@RTCATLNOR, *@IG@RTCDALIG, *@IG-Inve@RTCDALGUL,
 *@IG-Audit@RTCDALGUL, *@IG@RTCDEN, *@IG@RTCNB, *@IG@RTCKC,
 Joan C. Green@IG@RTCATL, Bobbie H. Ward@IG@RTCATL

Cc:

Bcc:

From: John J. Adair@IG@RTCDC

Subject: GAO Review

Date: Thursday, July 22, 1993 15:15:58 EDT

Attach:

Certify: N

Forwarded by:

The General Accounting Office is beginning a review of RTC OIG operations. All OIG staff should cooperate to the fullest extent in GAO's review.

We have pledged full cooperation to GAO and will allow them access to OIG files. In the investigations portion of the review, GAO may be asking questions which relate to some of our open cases. If questions are asked which members of the investigative staff feel may adversely impact sensitive investigative techniques, such as undercover operations or the confidentiality of the investigation, please coordinate this first with your Headquarters staff. We are working with GAO to preserve the confidentiality and integrity of the investigation and address GAO's questions at the same time.

The following GAO personnel will be conducting the review:

Lowell Dodge
 Norman Burrell
 Terry Draver
 John Pretwell

I thank you in advance for your cooperation.

To: George F. Sullivan@IG@RTCKCCHI
 Cc: Daniel L. Sherry@ig@RTCKCMID
 Bcc:
 From: Michael J. Koszola@IG@RTCKCCHI
 Subject:
 Date: Wednesday, June 10, 1992 16:58:34 CDT
 Attach:
 Certify: Y
 Forwarded by:

 There are reports of individuals removing computer equipment and other electronic equipment from the CCO/RTC facility.

The security company is having a difficult time in determining whether the individuals removing the equipment from the CCO are authorized to remove the equipment.

There are no internal controls in place to prevent unauthorized removal of equipment from the CCO facility. If you want me to suggest some procedures to account for the removal of equipment from the building, please let me know.

Thanks

Mike

To: Michael J. Koszola@IG@RTCKCCHI
 Cc: GFS@IG@RTCKCCHI
 Bcc:
 From: Daniel L. Sherry@ig@RTCKCMID
 Subject: re:
 Date: Thursday, June 11, 1992 7:18:46 CDT
 Attach:
 Certify: N
 Forwarded by:

 That goes a little beyond the scope of our job, but personally, George may want to permit it.

To: Michael J. Koszola@IG@RTCKCCHI
 Cc:
 Bcc:
 From: George F. Sullivan@IG@RTCKCCHI
 Subject: re:Security Training
 Date: Thursday, June 11, 1992 10:37:53 CDT
 Attach:
 Certify: Y
 Forwarded by:

 No, I don't see that as our function. Why was the original of this E-Mail cc Dan Sherry?



Resolution Trust Corporation
Office of Inspector General
Office of Investigation
4900 Main, Suite 700
Kansas City, Missouri 64112

(316) 968-7145
(800) 365-3342, Ext. 7145
FAX: (316) 561-0774

O F F I C E M E M O R A N D U M

DATE: June 26, 1992

TO: Jude J. Gerstner
Regional Inspector General for Audit

FROM: Daniel L. Sherry,
Regional Inspector General for Investigation

SUBJECT: Audit Referral on possible Misappropriation of Funds
Due the SKOKIE FEDERAL RECEIVERSHIP File No.KC-92-0040

This case is assigned to Special Agent KOSZOLA who requests an audit assist of the mortgage account that was being serviced by AFFILIATED BANK, Chicago, Illinois, for the RESOLUTION TRUST CORPORATION (RTC).

GARY HAYGOOD, a former employee of both SKOKIE FEDERAL, Skokie, Illinois and AFFILIATED BANK, Chicago, Illinois, is suspected of misappropriating the funds from a checking account at the COLONIAL BANK (COLONIAL), Montgomery, Alabama.

The COLONIAL account was being used for servicing RTC assets in Montgomery, Alabama. Loan payments that were collected on properties in Montgomery, were deposited in the COLONIAL account. HAYGOOD a signatory on the COLONIAL account was arrested for theft of funds from the COLONIAL account and is awaiting judicial action.

If you have any questions, please contact Special Agent KOSZOLA at (708) 290-7746.

George -

*Needs much more
detail in an audit
request.*

[Signature]



Resolution Trust Corporation
Office of Inspector General
Office of Investigation
4900 Main, Suite 700
Kansas City, Missouri 64112

(816) 948-7145
(800) 365-3342 Ext. 7145
FAX: (816) 561-0774

O F F I C E M E M O R A N D U M

DATE: June 30, 1992

TO: Jude J. Gerstner
Regional Inspector General for Audit

FROM: Daniel L. Sherry,
Regional Inspector General for Investigation

SUBJECT: Audit Referral on Sale of \$22.8 million in Treasury
Indexed ARM Loans File No. KC-91-0040

This case is assigned to Special Agent Koszola who requests an audit assist of the sale of Treasury indexed ARM loans that were valued at approximately \$22.8 million.

Allegedly two offers were made to purchase the loans, one of which was for \$17.3 million. The offers were allegedly rejected for being unacceptable low bids. The day after the offers were rejected in the CCO, the Treasury ARM loans valued at \$22.8 million were sold for approximately \$12.8 million from the KCO. The case file does not reflect the purchaser of the loans.

If you have any questions, please contact Special Agent Koszola at (708) 290-7746.

To: GFS@IG@RTCKCCHI
Cc:
Bcc:
From: Daniel L. Sherry@ig@RTCKCMID
Subject: KC-91-0040 & KC-92-0040
Date: Tuesday, June 30, 1992 10:16:06 CDT
Attach:
Certify: Y
Forwarded by:

I have memos dated June 30 and June 26 on the above cases that request audit assistance from Jude Gerstner. They are both woefully short on justification for even making the requests.

What are they concerning? Can't we do the work ourselves? Did we get these cases referred by Audit?

RESOLUTION TRUST CORPORATION, OFFICE OF INSPECTOR GENERAL

DATE: July 1, 1992

TO: Gerald Jacobs, Senior Vice President and General Counsel Division of Legal Services

FROM: Sharon E. Vander Vennet, Assistant Inspector General for Audit

SUBJECT: Controls Over RTC's Legal Services Agreements (A92-022)

This report presents the results of our nationwide audit of the Resolution Trust Corporation's controls over legal services agreements. The scope of our audit encompassed the entire solicitation and retention process.

We conducted this audit to determine whether (1) RTC's use of legal services contractors was in accordance with policy and guidance, (2) legal services agreements were being used to circumvent normal contracting procedures, and (3) RTC was effectively and efficiently administering legal services agreements. To accomplish our objectives, we performed audit work in Washington, each of RTC's regional offices, and selected consolidated offices.

In brief, during the period of our review RTC was not complying with several important policies and procedures, including those covering competitive bidding of routine-type matters, outside counsel evaluations, and contracting with non-legal contractors. In addition, the Legal Division's information systems did not capture important information or produce reports the Division needed to adequately manage its operations in accordance with policies, procedures, and statutory requirements and to ensure that it fulfilled its responsibilities. Also, the Legal Division review process for outside counsel invoices and the program the Division used to pay these invoices allowed overpayment of outside legal counsel. Finally, the Division lacked adequate controls to ensure that conflicts of interest were reported to appropriate levels and those decisions were handled consistently and were properly documented.

As a result of our findings, we are making recommendations to improve compliance with current policies and procedures and suggest new ones to improve the Legal Division's operations. In addition, we are recommending internal control improvements and information system improvements.

On March 17, 1992, we provided a draft of this report to the RTC and FDIC General Counsels. Because several key events occurred subsequent to the completion of our fieldwork, such as the issuance of the FDIC's OIG report on the FDIC Legal Division¹ and the separation of RTC from FDIC, we agreed to gather additional information on initiatives taken since the conclusion of our fieldwork. We learned that RTC has taken steps to improve its methodology for hiring outside counsel, implemented its new management information system, revamped its payment system, and developed a budget-based case management system. Information on these improvements is contained, as appropriate, throughout this report.

The Inspector General Act of 1978, as amended, requires us to report on the status of management decisions on our recommendations in our semiannual reports to Congress. The term "management decision" refers to management's evaluation of the findings and recommendations included in an audit report and the issuance of a written response that describes:

- specific corrective actions already taken,
- corrective actions to be taken together with the expected completion dates of their implementation,
- documentation that will confirm the completion of corrective actions,
- management's opinion on monetary benefits included in the report, and
- the reasons why a particular recommendation is not considered valid.

We received the Corporation's comments on our draft report on June 15, 1992, and have included them as an appendix. The response to our May 4, 1992 draft report, for the most part, described the Corporation's management decisions on the recommendations. Although we generally agree with the Corporation's plans on recommendations 1, 2, 6, 8, 9, 12, and 13; we need additional documentation describing management's decisions before we can close the recommendations. Our evaluation of the Corporation's comments discusses the specific additional information required. The response did not fully address recommendations 5, 7, and 14 and did not address recommendations 10 or 11. The Division disagreed with recommendations 3 and 4. To ensure that we can respond to our reporting requirement, we request that the audit liaison provide the information on the management decisions within 60 days after the date of this report.

¹This report was prepared by Price Waterhouse, a certified Public Accounting firm, under the direction of the FDIC Office of Inspector General.

EXECUTIVE SUMMARY

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) established the Resolution Trust Corporation (RTC) to resolve the savings and loan industry crisis under the management of the Federal Deposit Insurance Corporation (FDIC).² In its role as manager, among other items, FDIC provided legal services to RTC through both its own in-house Legal Division and outside legal counsel.³ Because FDIC's legal case load increased substantially with the passage of FIRREA, the Legal Division began using outside counsel extensively and reported spending \$615 million on outside counsel in 1990. Both the Congress and the public expressed concerns about these large expenditures.

Because of the concerns expressed and the large dollar amounts involved, we conducted this audit of the Legal Division's use of outside counsel. Our audit was performed from March 1991 to August 1991, and focused on the Legal Division's adherence to policy and guidance; the efficiency and effectiveness of the processes to hire, pay, and manage outside counsel; and the Division's use of outside counsel to enter into contracts instead of using established RTC contracting procedures. We conducted additional work in March and April 1992 to determine what changes the RTC Legal Division had made since we completed our field work.

Results In Brief

In brief, during the period of our review RTC was not complying with several important policies and procedures, including those covering competitive bidding of routine-type matters, outside counsel evaluations, and contracting with non-legal contractors. In addition, the Legal Division's information systems did not capture important information or produce reports the Division needed to adequately manage its operations in accordance with policies, procedures, and statutory requirements and to ensure that it fulfilled its responsibilities. Also, the Legal Division review process for outside counsel invoices and the program the Division used to pay these invoices allowed overpayment of outside legal counsel. Finally, the Division lacked adequate controls to ensure that conflicts of interest were reported to appropriate levels and those decisions were handled consistently and were properly documented.

Compliance with Policy and Procedures

In certain areas, the Legal Division did not adhere to established policy and guidance which would have served it well. For example, the Division did not competitively bid routine-type legal matters, nor did it adhere to RTC contracting procedures when it used its contracting authority to have outside counsel procure non-legal services from non-legal contractors. Further, although required to do so under its own procedures, the Legal Division did not periodically evaluate outside counsel's performance using as criteria cost-consciousness, responsiveness, case management, knowledge of FDIC and its billing procedures, and budgeting.

As a result, the Legal Division did not benefit from the potential cost savings associated with competition; did not provide fair and open competition, and may not have used firms with the best possible qualifications. However, we learned as a result of reviewing recent RTC Legal Division policies and procedures that the Division is attempting to provide for competition in retaining outside counsel. Because these new initiatives remain relatively untested, we are recommending that RTC establish internal controls to ensure compliance with the new policies and procedures on the competitive retention of outside counsel. We are also recommending that the Division establish internal controls to ensure outside counsel evaluations are prepared when required. In addition, we are recommending that the Division discontinue the practice of using outside counsel to hire non-legal contractors and implement adequate internal controls to ensure future contracting is done in accordance with RTC policies and procedures.

Management Information Systems

The Legal Division operated multiple, non-integrated management information systems which did not provide sufficient information. These systems were developed before FIRREA was enacted and were not designed to handle the Division's increased work load or to keep pace with the Division's changing information needs.

² Effective February 1, 1992, the Resolution Trust Corporation Refinancing, Restructuring and Improvement Act of 1991 removed FDIC as RTC's exclusive manager and established a Chief Executive Officer to manage RTC.

³ On September 10, 1991, the Board of Directors' approved the creation of a separate RTC Legal Division and appointed a General Counsel to head the Division effective September 22, 1991.

For example, the systems could not provide data on the total dollars spent on legal services or amounts paid to law firms over a 12-month period. Nor could the systems provide accurate information on the fitness and integrity of outside counsel or real or potential conflicts of interest.

The Division needs sufficient and reliable information to manage its operations and fulfill its responsibilities. It has undertaken some recent initiatives to improve its systems such as implementing the RTC Legal Information System (RLIS). RLIS has been designed to provide the Division with much needed information to aid it in achieving its objectives. Nonetheless, we are recommending that the RTC Legal Division assess its short- and long-term information needs and develop a plan to address those needs. In addition, the Division needs to develop sufficient standardized reporting capability to ensure that it has the information necessary to manage outside counsel.

Invoice Processing Led to Overpayments

The review and payment processes the Legal Division used to analyze and pay outside counsel invoices were not adequate to verify correctness or identify questionable charges on invoices, nor did they ensure correct payment to outside counsel. By implementing a payment program without an oversight mechanism to ensure the effective functioning of the review process and without specific guidance to follow, the Legal Division made numerous overpayments to outside counsel. The payment program reduced the incentive for Legal Division staff to perform an adequate review because, unlike the former system, staff were no longer required to: review and approve invoices before outside counsel received payment. Further, the Legal Division's process for identifying overpayments involved a sampling methodology which did not capture all overpayments made to outside counsel.

Under RLIS, only certain invoices are selected for review. In addition, RTC Legal has not yet issued its own invoice review procedures. To improve invoice processing, we are recommending that the RTC Legal Division revise its invoice processing procedures, including ensuring approval of amendments to Legal Services Agreements, training its staff responsible for reviewing invoices, and establishing an invoice processing oversight/review mechanism.

Cost Controls Over Matters Referred to Outside Counsel

The Legal Division did not have adequate cost controls over those cases it referred to outside counsel. The Division received cost and time estimates from outside counsel and also received information relating to the progress counsel was making on legal matters. It did not, however, routinely analyze and monitor the costs associated with the matter or check their reasonableness. By not continuously analyzing the information to ensure that the benefits of pursuing a matter outweigh its costs, the Division may have incurred unnecessary expenses.

However, the RTC Legal Division has recently implemented a budget-based management information and payment system. Because budgets for each matter must be submitted by outside counsel and reviewed and approved by the Division, better cost control should be achieved. We believe that the RTC Legal Division should consider incorporating internal control responsibilities into each manager's performance standards.

Conflicts of Interest Were Not Adequately Documented and Communicated

The Legal Division did not have adequate internal controls to ensure that conflicts of interest were reported to appropriate levels of Legal Division management. Further, the Outside Counsel Conflicts Committee policies were not sufficiently stringent to prevent potential criticism of conflicts decisions and did not provide adequate documentation for all its decisions. As a result, the Legal Division could be subject to claims of favoritism and unfair treatment of outside counsel. We are recommending that the RTC Legal Division develop and implement a system to centrally record, report, and monitor all conflicts of interest. As part of this system, the Outside Counsel Conflicts Committee should document the rationale for its decisions. In addition, we are recommending that the RTC Legal Division evaluate the Outside Counsel Conflicts Committee decision-making policies and procedures and develop more stringent guidelines which would promote the use of firms without conflicts of interest.

CHAPTER 1 Introduction

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) appointed the Federal Deposit Insurance Corporation (FDIC) as the Resolution Trust Corporation's (RTC) exclusive manager. FDIC, in its capacity as RTC's

manager, provided RTC with legal counsel through the FDIC Legal Division.⁴ The Legal Division used outside counsel rather than in-house counsel as a means to provide RTC with most of its legal services for two reasons. First, the use of outside counsel gave the Legal Division the ability to staff legal matters without hiring large numbers of in-house attorneys. In addition, because RTC is scheduled to dissolve on December 31, 1996, a large number of attorneys are required for only a few years. The FDIC Legal Division reported expenditures on outside counsel of \$615 million in 1990 for both FDIC and RTC legal services.

On January 30, 1991, Senator David Pryor requested the Office of Inspector General to conduct an audit of the Legal Division's agreements with outside counsel. His concerns related to Legal Division oversight of agreements with outside counsel, competition for Legal Division work, and review of outside counsel invoices. Although we had already planned to conduct an audit of legal services, we expanded the audit work to address the Senator's concerns.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our audit were to determine whether (1) RTC's use of legal services contractors was in accordance with policy and guidance, (2) legal services contracts were being used to circumvent normal contracting procedures, and (3) RTC was effectively and efficiently administering legal services agreements. Our audit encompassed the entire solicitation and retention process, from selecting outside counsel and assigning legal matters to them to paying outside counsel for services rendered. We also included specific testing in our audit to address Senator Pryor's concerns. Our review was limited to firms the Legal Division used during calendar year 1990 and to documentation maintained at FDIC/RTC. We did not examine documentation maintained by the outside counsel or the payment of conservatorship invoices for legal services. We performed our work at Legal Division headquarters in Washington, DC; Legal Division Offices in Atlanta, Dallas, Denver, and Kansas City; and at 9 consolidated offices including the Mid-Atlantic, Metroplex, Gulf Coast, Southern, Central Western, Coastal, Intermountain, North Central, Kansas City, and Chicago Consolidated Offices. We conducted our audit from March through August 1991, in accordance with generally accepted government auditing standards. We also did follow-up work on certain issues in March and April 1992.

To accomplish our objectives, we interviewed Legal Division staff, and obtained, reviewed, and evaluated documentation provided by FDIC/RTC. Specifically, we:

- Reviewed Legal Division policies and procedures for the selection and retention and payment of outside counsel as established in the Division's Procedural Manual, *A Law Firm's Guide: How to be Considered for Retention by The FDIC and RTC, Guide for Legal Representation*, and various memorandums;
- Selected and reviewed a judgmental sample of 464 invoices and outside counsel selection and retention documents at Legal Division offices in the Eastern, North Central, Southwest, and Western regions and at the Legal Division's Washington, DC headquarters to determine the level of compliance with policies and procedures;
- Evaluated the Legal Division's policies and procedures pertaining to the selection, retention, and payment of outside counsel to determine the completeness and adequacy of the policies and procedures;
- Identified and evaluated the Legal Division's controls over outside counsel by interviewing Legal Division staff and reviewing Legal Division policies and procedures to determine whether these controls provided sufficient oversight and monitoring of outside counsel; and
- Identified and evaluated the selection and retention process, the invoice processing programs, and the management information systems by interviewing FDIC/RTC staff and reviewing FDIC/RTC documents such as policies and procedures, and reports by consultants and the FDIC Office of Inspector General to determine whether the programs, processes, and systems efficiently and effectively met the goals and needs of the Legal Division.

⁴On September 10, 1991, the Board of Directors approved the creation of a separate RTC Legal Division and appointed a General Counsel to head the Division effective September 22, 1991. Effective February 1, 1992, the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 removed FDIC as RTC's exclusive manager and created a Chief Executive Officer position to manage RTC. This report covers a period prior to these changes in organization.

LEGAL DIVISION OPERATIONS⁵

The Legal Division's mission is to provide FDIC/RTC with professional, comprehensive, and cost effective legal services and support through its nationwide staff of 3,030 employees including 1,270 attorneys (as of June 30, 1991).⁶ In addition to its headquarters staff, the Legal Division supported FDIC/RTC with staff in regional and consolidated offices throughout the United States. The Legal Division assisted FDIC/RTC in overseeing the operation of insured depository institutions, resolving troubled and insolvent financial institutions, recovering and liquidating assets of insolvent financial institutions, prosecuting and defending matters related to FDIC/RTC operations, and ensuring compliance with laws. To carry out its mission, the Legal Division had five branches which reported to the General Counsel. One of the branches—the RTC Branch—supported RTC in the development of uniform nationwide policies far resolutions and liquidations of failed institutions. Further, the RTC Branch represented RTC in its corporate capacity in litigation, provided administrative direction to field personnel, and coordinated and supervised litigation handled in the field including the use of outside counsel.

SELECTION AND RETENTION OF OUTSIDE COUNSEL

The Legal Division's selection and retention process encompasses the period from identifying potential outside counsel to perform work through evaluating the actual work performed. Outside counsel who want to provide legal services to FDIC/RTC must subscribe to the Legal Division's selection and retention process. Specific procedures in the selection and retention process include filing a contractor registration request form, completing an interview with the Legal Division, and executing a Legal Services Agreement. Once these steps have been completed, the Legal Division adds the firm to the List of Counsel Utilized (LCU) from which the firm may be retained to perform Legal Division work. With few exceptions, only firms on the LCU are eligible to receive work from FDIC/RTC.⁷

The Legal Division requires outside counsel interested in providing services to FDIC/RTC to complete several steps. First, outside counsel must submit a Contractor Registration Request form which provides background information on the firm to comply with FIRREA mandates that outside contractors meet minimum standards of competence, experience, integrity, and fitness. After approval of the registration request, the firms become registered contractors for FDIC/RTC. This status does not ensure that the firms will receive work, only that they have certified that they meet the minimum requirements. As of October 10, 1991, 8,082 legal firms had completed this process and were registered on the Contractor Database.⁸

The Legal Division then distributes the information submitted by the firms to the Legal Division regional offices. If regional Legal Division staff want to use a firm, for example, because of the firm's expertise, the staff will interview the representatives from the firm. Upon completion of a successful interview, the staff submit a memorandum to the Legal Division's headquarters in Washington requesting approval to use the firm.

If headquarters approves the firm for use, the firm is then requested to execute a Legal Services Agreement (LSA) with the Legal Division. The LSA is not a contract, but rather an offer to perform services which incorporates Legal Division policies and procedures with which outside counsel are expected to comply. The LSA also identifies the outside counsel's staff who may work on RTC legal matters and their rates.

Finally, after the firm has executed an LSA, it is added to the LCU. The LCU is updated to reflect the addition or termination of firms or other changes and is distributed monthly to the regions. As of December 4, 1991, the LCU contained the names of over 3,500 outside counsel who could potentially receive FDIC/RTC work.

The Legal Division requires that outside counsel report conflicts of interest from the onset of the selection and retention process throughout the performance of legal services for FDIC/RTC. If any actual or potential conflicts of interest arise, the firms are required to immediately report them. Firms usually disclose conflicts to the Legal Division regional staff who send a memorandum to the Outside Counsel Conflicts Committee in Washington recommending treatment of the conflict. The Out-

⁵This section reflects Legal Division operations during the period of audit work—March through August 1991.

⁶As a result of the September 10, 1991, Board of Directors decision to separate RTC Legal from the FDIC Legal Division, the nationwide staff was divided between the two corporations.

⁷The LCU is a database which contains basic information on the outside counsel such as the firms' addresses, contact person, and phone numbers and is intended to be used by the regions to select approved legal firms.

⁸The Contractor database contains information on contractors from their Contractor Registration Request form.

side Counsel Conflicts Committee considers the regional recommendation, but ultimately it decides how to treat the firm's conflict of interest and provides its decision to the region.

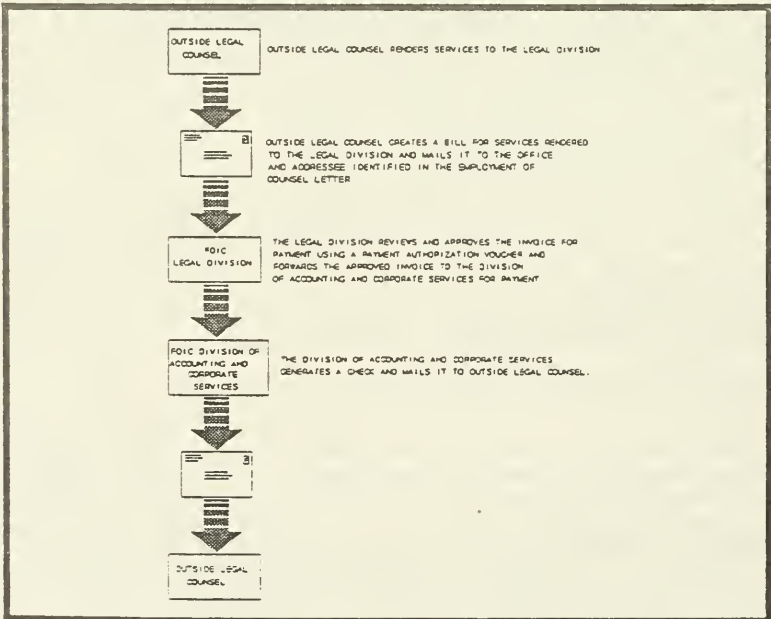
To ensure that FDIC/RTC receive quality services from outside counsel, the Legal Division requires, at a minimum, the completion of (1) an oral evaluation of the firm at the conclusion of a significant matter and (2) an annual written evaluation of each firm. Legal Division staff are to evaluate firms based on cost consciousness, responsiveness, case management, knowledge of FDIC procedures and issues, billing procedures, and budgeting.

PAYMENT OF OUTSIDE COUNSEL

During 1990, FDIC/RTC used two different programs to pay outside counsel—the Payment Authorization Voucher Program (PAV) and the Accelerated Payment Program (APP). Under both programs, FDIC's Division of Accounting and Corporate Services (DACS) issued checks to pay outside counsel.⁹ However, the programs differed in that the APP allowed outside counsel to receive payment before Legal Division review and approval of their invoices, whereas the PAV required review and approval of invoices before payment. Regardless of when the Legal Division reviewed the invoices, the review process was the same. The process entailed verifying mathematical accuracy and examining the invoices for inappropriate charges such as secretarial overtime, first class airfare, or other inappropriate charges which the Legal Division would disallow.

Under the PAV program, outside counsel submitted invoices directly to the Legal Division for review and approval. After completing the review and approval process, a payment authorization voucher and fee bill memorandum were forwarded to DACS for payment (see Figure 1.1 for a depiction of the process).

Figure 1.1: Payment Authorization Voucher Program

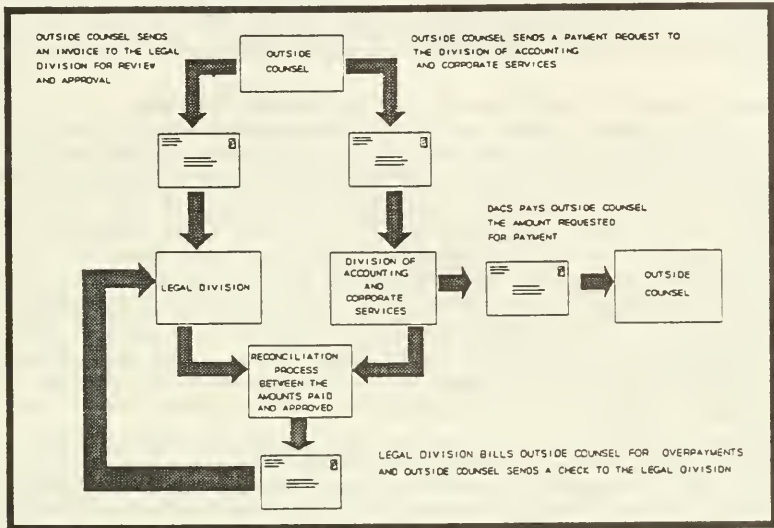


The PAV review process produced a backlog of invoices, thereby delaying payment to outside counsel. As a result, the Legal Division and DACS implemented the APP in October 1990. The Legal Division estimated a backlog of approximately 32,000 invoices before the APP was implemented. The APP allowed outside counsel to bill

⁹DACS does not pay conservatorships' outside counsel—each conservatorship pays its own legal expenses. However, the conservatorships submit the outside counsels' invoices to the Legal Division for review and approval.

DACS directly and to receive payment before the Legal Division reviewed the charges. Nonetheless, outside counsel were still required to submit an invoice to the Legal Division for review and approval even though payment was made based on the request sent to DACS. To identify overpayments, DACS and the Legal Division planned to perform a reconciliation between the amounts paid by DACS and the amounts approved by the Legal Division (see Figure 1.2 for a depiction of the process).

Figure 1.2: Accelerated Payment Program



During the reconciliation process, the Legal Division planned to review a sample of outside counsel invoices to determine whether any overpayments had been made. If overpayments were identified, the Legal Division would request a refund from outside counsel for the amount of overpayment. Outside counsel were required to send refunds to the Legal Division's Administration Section in Washington, DC. The reconciliation process began in the regions in May 1991.

MANAGEMENT INFORMATION SYSTEMS

The Legal Division used a system called the Case Management System (CMS) to provide basic data on legal matters such as the name of the outside counsel assigned to the matter, the financial institution number, and the status of the matter. This system was developed in the mid-1980's as a temporary measure to provide the Division with data related primarily to tracking litigation matters. With the increased diversity in the types of legal matters and the Corporations' growing information needs, the Legal Division decided that CMS needed to be substantially reworked or replaced and decided to develop a new system. Both the Legal Division and the RTC Branch of the Legal Division developed their own management information systems. Because the RTC Branch believed that the Legal Division System—Legal Division Information Management System (LDIMS)—would not be implemented quickly enough for its needs, the Branch developed its own system—the RTC Legal Information System (RLIS). The RTC Branch originally intended to use RLIS to manage and track only those legal matters related to assets assigned to asset management and disposition contractors. However, the Branch decided to expand the system to include all RTC legal matters. The RTC Legal Division began initial implementation of RLIS on October 28, 1991.

CHAPTER 2

The Legal Division Did Not Comply with Important Policies and Procedures

The Legal Division, and RTC in general, have several important policies and procedures with which the Legal Division was not complying. Specifically, the Legal Division did not competitively bid routine-type legal matters as stated in its policy, did not follow RTC contracting procedures in contracting with non-legal contractors on behalf of an RTC Division, and did not evaluate outside counsel performance. This non-compliance resulted from the Division's lack of internal controls, sufficient guidance, and management support. As a result, the Legal Division may have paid more for services than it should have, did not provide for fair and open competition as required by FIRREA, and could be using firms with less than adequate qualifications.

LEGAL DIVISION DID NOT COMPETITIVELY BID ROUTINE MATTERS

The Legal Division did not use a competitive process to refer routine-type matters to outside counsel during the period of our audit ending August 1991. The Legal Division issued a policy statement dated May 1990, stating that it would competitively bid routine-type matters to outside counsel, but adequate procedures, incentives, and internal controls were not in place to implement the policy. The Legal Division has referred a significant amount of work to outside counsel, but did not realize potential savings by allowing firms to compete for the work.

The Legal Division's *A Law Firm's Guide: How To Be Considered for Retention by the FDIC and RTC*, stated that "The Corporation will use a competitive bidding process within defined geographic areas in order to refer the following types of routine matters to outside counsel: (a) routine, nonjudicial foreclosures; and (b) collection litigation on assets valued under \$10,000." Washington Legal staff responsible for outside counsel activities stated that they believed the regional offices were following this guidance and using a competitive bidding process for routine-type matters.

Nonetheless, we found that competitive bidding was not being used by any of the regional offices. We believe the Legal Division did not use a competitive bidding process for its routine-type matters because the Division did not have specific procedures to tell Legal Division attorneys how to compete bids. The guidance that was available was not specific enough to be used as criteria to compete contracts for legal services and was too limited in the types of matters which were to be competitively bid. It did not define the competitive bidding process, the boundaries of geographic areas, or an inclusive list of routine-type matters. Also, the Legal Division regional offices did not have any incentives to use a competitive bid process and internal controls were not in place to ensure that staff competed routine work.

Evidence presented in a report dated February 1991, by the management consulting firm of Altman, Weil, Pensa to the Legal Division indicated that the majority of the work referred to outside counsel was routine and could have been competitively bid.¹⁰ Altman, Weil, Pensa cited a form letter sent to law firms interested in representing the Legal Division on RTC related matters in which the Regional Counsel stated, "... RTC considers most legal services to be fungible and expects quality, competent work from any and every approved law firm retained, the RTC intends to enter Letter Agreements with those law firms offering the lowest rates without regard to such intangible, nonquantifiable factors as firm reputation/sophistication, size of firm, specialized sections/groups/departments within the firm, etc." Altman, Weil, Pensa also reported that in its interviews with various RTC and FDIC staff and management attorneys, "We were consistently told that the matters were really not as complicated as they were thought to be at first blush; i.e., that much of the work being sent to outside lawyers was truly commodity work. . . . A litigation counsel characterized it this way, 'The bulk of the work we refer to outside counsel is routine.'"

From the comments made by the Legal Division's regional staff, we believe a significant amount of matters referred to outside counsel could be defined as routine and could have been competitively bid.

Nonetheless, Altman, Weil, Pensa offered insight on the difficulties in defining routine-type matters. They stated "attorneys sometimes tend to consider their cases as more unique or complex than they often are. All lawyers, both in-house and in private law firms, often and quite naturally assume that the matter they are handling is less a commodity than it actually is." Without some definition as to what

¹⁰ Report entitled *Report and Recommendations on Outside Counsel Fees and Rate Structures for the Legal Division of the Federal Deposit and Insurance Corporation*, February 1991.

is considered a routine matter, we believe that most attorneys will be less likely to consider any individual matter as routine.

In addition to lacking specific guidance, Legal Division offices also had no incentives to use a competitive bid process for matters referred to outside counsel. Initially, extra time is necessary to compete work to a group of bidders. Without incentives to do so, regional offices will not expend the up-front commitment of resources necessary to conduct effective competitive bid processes. Most matters have been referred individually to law firms with work to be performed on an hourly rate basis. Making individual referrals requires less of an up-front commitment than identifying groups of matters for bid, getting information to interested bidders, and evaluating bids received. A Legal Division regional office did not receive any recognition for pursuing competitive contracts and did not realize any budgetary or operational benefits for pursuing more cost effective contracting methods such as competitive bidding.

In addition to a lack of specific procedures which explain how and what to competitively bid and a lack of incentives to do so, the Legal Division did not have adequate internal controls to determine whether the requirement to use competitive bid processes was being followed. The Legal Division was unable to determine which regions, if any, were using competitive bidding, and the extent of its use. The lack of monitoring controls is best illustrated by the fact that a former Legal Division Assistant General Counsel responsible for outside counsel issues at Washington headquarters stated that he believed that the regions were using competitive bidding, but in fact, the regions were not competitively bidding at all.

Since we completed our fieldwork, the RTC Legal Division has taken steps to improve its methodology for hiring outside counsel by issuing new policies and procedures. In a December 24, 1991, directive, the RTC Legal Division established three processes for selection and engagement of outside counsel. One of these processes requires the use of a Request for Proposal Memorandum (RPM), identifying the Division's need for legal services, which is sent to approved outside counsel meeting specific criteria to handle the matters. Once the Division receives responses from outside counsel, a Legal Division panel reviews them and determines the most advantageous proposal. Based on the panel's evaluation, the Legal Division selects outside counsel for the matter. The second type of process in the RTC Legal Division's new policies and procedures includes the use of Basic Ordering Agreements (BOA) by the Division for large numbers of similar matters involving similar services. The BOA's allow the Legal Division to retain one or more outside counsel through a single contract to provide these services. The RTC Legal Division also outlined a third process which does not provide for competition. Under this process, the Division reserved the authority to engage firms needed, for example, to handle emergency situations or provide expertise otherwise unobtainable.

The RTC Legal Division also issued new guidance for outside counsel in February 1992 superseding *A Law Firm's Guide: How To Be Considered for Retention by the FDIC and RTC*. This new guide, *RTC Guide for Outside Counsel*, eliminates references to specific instances where competitive bidding will be used but provides for the use of alternative competitive rate structures such as flat, contingent, or other innovative rate proposals.

OUTSIDE COUNSEL'S PERFORMANCE NOT ROUTINELY EVALUATED

In general, the four regions and Legal Division headquarters were not evaluating outside counsel in accordance with established policies and procedures. By not performing these evaluations, the Legal Division did not ensure that the best qualified legal firms were being used to perform Legal Division work.

The Legal Division's Procedural Memorandum 1.17, *Procedures for Evaluation of Outside Counsel*, requires periodic evaluations of outside counsel's performance. According to this memorandum, outside counsel should be evaluated based on cost consciousness, responsiveness, case management, knowledge of FDIC procedures and issues, billing procedures, and budgeting. Procedural Memorandum 1.17 requires two types of evaluations as follows:

- Each regional office should ensure that the managing attorney of a case, in conjunction with the regional counsel or designee, conducts an oral evaluation of outside counsel at the conclusion of each significant case. In addition, this oral evaluation should be conducted at the conclusion of a significant number or block of routine cases, such as foreclosures, collection actions, and bankruptcies.
- Each regional counsel should conduct an annual, written evaluation of each firm. Regional counsel should prepare the evaluation with the appropriate regional attorneys and the senior attorney at the consolidated field office with on-site responsibility for the cases. Consideration should be given to the case-by-case evaluations of the staff. In addition to the previously mentioned evaluation criteria, the

review should also encompass the current rate schedule with the firm. Further, the reviewer should consider renegotiating rates based on relevant factors such as volume of work, quality of legal services, and regional economic conditions. The review should cover all concluded and pending matters. If a review of all firms is too burdensome for the region, Procedural Memorandum 1.17 allows an alternative procedure that only firms with fees in excess of certain dollar amounts need to be evaluated. The regional counsel should also establish a procedure whereby a firm is evaluated whenever its billings reach a certain dollar amount if it has not been evaluated within the preceding 12 months. At the conclusion of the annual evaluation, the regional counsel or designee should complete the Outside Counsel Evaluation Form and submit it to the Legal Division's Administration and Operations Section.

The Assistant General Counsel, Professional Liability Section (PLS) for RTC, stated that he encouraged routine evaluations of firms handling PLS matters. Additionally, PLS evaluations which were done were available to other Legal Division attorneys, and outside counsel were encouraged to review their own evaluations. PLS believed that the evaluation process was very beneficial in their working relationship with outside counsel. However, evaluations had been prepared sporadically because PLS's procedures did not provide for specific time frames for doing an evaluation of outside counsel.

Other Legal Division staff stated that they were reluctant to perform and document evaluations. They expressed concerns about the availability of the information under the Freedom of Information Act and also because of potential liability issues. Additionally, the Legal Division did not emphasize adherence to its policies and procedures as contained in Procedural Memorandum 1.17, *Procedures for Evaluation of Outside Counsel*. Evaluations of contractor performance are a basic and critical part of any contracting process. We do not believe any basis exists to exempt outside counsel from this requirement.

LEGAL DIVISION USED ITS CONTRACTING AUTHORITY TO CIRCUMVENT RTC CONTRACTING PROCEDURES

RTC Legal Division's Professional Liability Section did not comply with RTC contracting rules and regulations when, on behalf of the RTC Investigations Branch, it hired outside counsel to contract for non-legal services from non-legal contractors. Specifically, there was not fair or consistent treatment of offerors of the services obtained, as required by FIRREA. Contractors registered on RTC's Contractor Database who could provide the services being sought by the RTC Investigations Branch did not receive adequate contracting consideration because outside counsel was not required to follow RTC's contractor policies and procedures. Additionally, there was no assurance that the sub-contractors hired by outside counsel met the minimum standards of fitness and integrity. Further, an additional layer of contract management was created which added an undeterminable amount of extra costs. Also, the third party contracting placed the outside counsel in a conflict of interest between their financial interests and determining the best course of action for RTC.

The Legal Division's Professional Liability Section (PLS) used its contracting authority to circumvent normal RTC contracting procedures by hiring outside counsel to contract with non-legal contractors for non-legal services. These services included those of private investigators and asset search specialists. The non-legal contractors were hired to augment RTC Investigations staff in their attempts to identify probable cause for litigation against former officers and directors of failed institutions. Outside counsel supervised and guided the non-legal contractors and billed the Legal Division for their services. Once the non-legal contractors identified any potential claims, the outside counsel that initially hired the non-legal contractor would litigate the matter for the Legal Division.

FIRREA requires that RTC contract in an efficient manner and provide adequate competition and fair and consistent treatment of all offerors. The Legal Division was able to bypass the normal contracting process because RTC contractor selection procedures specifically exempted legal services (outside counsel) from the standard procedures. However, the services indirectly contracted for on behalf of RTC Investigations by the Legal Division were not legal services.

According to an RTC Investigations section chief at Washington headquarters, the contracting arrangement between the Legal Division's PLS and RTC Investigations developed because of concerns about confidential information being disseminated to the public, a large number of failed institutions for which the statute of limitations was expiring, and insufficient internal resources to investigate these institutions. RTC Investigations did not believe that its contracting needs could be met through normal RTC contracting procedures because RTC contracting procedures required the release of confidential, institution-specific information to large numbers of po-

tential contractors. The RTC Investigations section chief believed release of the information would compromise potential litigation. RTC Investigations sought relief through the RTC Executive Director's office by asking for a special contracting waiver granting it the authority to establish a Basic Ordering Agreement with a limited number of contractors bound by confidentiality agreements. The RTC Office of Contracts opposed the arrangement and no other arrangement or relief was granted to RTC Investigations.

While the contracting authority issue remained unresolved, RTC Investigations had a considerable number of failed institutions for which the statute of limitation was expiring. Approximately 200 failed institutions, most of which had failed before RTC's formation, had not been investigated for possible litigation claims. In addition, RTC Investigations was not adequately staffed because it was just beginning to hire and train its own personnel. Faced with a large backlog of failed institutions which had not been investigated and concerns with the normal contracting procedure, RTC Investigations sought relief through the Legal Division.

Although there were extenuating circumstances, using the contracting arrangement between the Legal Division and RTC Investigations created several adverse effects. First, fair and consistent treatment of all potential offerors was not assured by the Legal Division. Further, an additional layer of contractor management was added to the contracting process, resulting in additional expenditure of funds to pay the outside counsel for managing the non-legal contractors. Additionally, the Legal Division introduced a potential conflict of interest by hiring outside counsel to determine whether grounds existed to litigate the case when the same outside counsel would be paid to undertake that litigation.

PLS selected outside counsel from its own list of outside counsel which includes firms that have not been approved for placement on the Legal Division's List of Counsel Utilized. Also, the PLS hired outside counsel to perform a contract management function and did not give equal consideration to all potential contractors who had met the criteria to contract with RTC. In addition, the outside counsel were not required to hire these non-legal contractors from the RTC Contractor Database. Therefore, non-legal contractors who had completed the requirements to contract with the RTC were not given adequate consideration. Those non-legal contractors who worked with the outside counsel previously may have received an unfair advantage over contractors on the RTC Contractor Database because they had worked with the law firm before.

The use of outside counsel to hire and manage non-legal contractors added additional management oversight layers to the contracting process. All coordination efforts between RTC Investigations staff and the non-legal contractors hired by outside counsel were conducted through the Legal Division and then through the outside counsel because only Legal Division staff could contact the outside counsel. An RTC Investigator pointed out that there were occasions when the Legal Division hired outside counsel to hire a non-legal contractor to perform an investigation of a failed institution and RTC Investigations was unaware of the work being performed and was unable to coordinate investigative efforts. The additional layers of management oversight were inefficient and unnecessary.

The hiring of outside counsel to hire non-legal contractors was also an inefficient use of RTC's limited resources. Outside counsel who hired non-legal contractors usually charged an hourly rate for managing and overseeing the non-legal contractors. No controls or limits were in place governing how much could be billed for these services or how to verify the actual contractor oversight provided.

Hiring outside counsel to hire, non-legal contractors to determine whether the Legal Division has reasons to litigate or pursue a claim against officers or directors of a failed institution introduced a potential conflict of interest between the outside counsel hired and RTC. When the Professional Liability Section hired outside counsel to hire non-legal contractors, that outside counsel was also hired to litigate any professional liability claims from failed institutions. This arrangement placed the firms' financial interests in conflict with their ability to objectively investigate and evaluate possible claims and actions against former directors and officers of failed institutions.

The Legal Division did not have established procedures for outside counsel to identify and bill the non-legal contractor fees and expenses to the Legal Division in a standard or consistent manner. Some law firms billed the non-legal contractor fees through the expense portion of their monthly invoice, while others had the non-legal contractor bill the Legal Division directly. There are no accounting procedures requiring these charges to be identified and recorded separately from regular legal services fees and expenses. Without this distinction, RTC cannot determine how much has been spent in contract management-related fees to outside counsel or identify how much has been paid to non-legal contractors hired by outside counsel.

RECOMMENDATIONS

We recommend that the Senior Vice President and General Counsel, RTC Division of Legal Services:

(1) Establish adequate internal controls, including monitoring procedures to ensure compliance with the new policies and procedures on competitive retention of outside counsel.

(2) Develop new procedures to clearly define when evaluations of outside counsel are to be prepared and enforce adherence by establishing mechanisms to ensure that evaluations are prepared.

(3) Discontinue the practice of using outside counsel to hire non-legal contractors.

(4) Implement adequate internal controls, such as policy statements prohibiting third party contracting, to ensure adherence to RTC's established contracting policies and procedures when contracting for non-legal services.

CORPORATION COMMENTS AND OIG EVALUATION

A summary of the Corporation's response to each of our recommendations and our analysis follows:

Establish internal controls to ensure compliance with competitive retention policies and procedures (recommendation 1): The Division of Legal Services has created a new organizational section entitled the Outside Counsel Management Section. A group within that section, called the Policies and Procedures Unit, is responsible for drafting, implementing, and overseeing the implementation of general policies and procedures relating to the management of outside counsel. This unit will perform visitations and weekly telephone conferences with field Legal Services Coordinators, but it is unclear from the Division's response what specifically will be reviewed during these visits or teleconferences. In addition, Legal Services Committees have been appointed in each field office, as well as at headquarters in Washington. Among the duties outlined for these Committees include serving as an oversight mechanism to monitor the selection and retention of outside counsel and to ensure compliance with the competitive procedures. The institution of these two groups addresses our recommendation, but to close our recommendation we will need to review documentation on the specific responsibilities and duties of each group.

Develop and enforce procedures on outside counsel evaluations (recommendation 2): The Division of Legal Services' Outside Counsel Management Section plans to develop and implement procedures outlining specific requirements for the evaluation of outside counsel. In addition, the Division plans to have the initial evaluations updated periodically, at least annually. Also, for monitoring purposes, they intend to have the field offices report on the evaluations completed. These actions by the Division should address our recommendation. We will need to review those procedures and the steps the Division has taken to monitor evaluation preparation to close the recommendation.

Discontinue the practice of using outside counsel to hire non-legal contractors (recommendation 3): According to its response, the Division of Legal Services determined that it has the delegated authority to hire non-legal contractors through its outside counsel contracting agreements and intends to continue to do so. In addition, the Senior Vice President and General Counsel provided several reasons why the Division believes this contracting was necessary and justified. These reasons include attorney-client confidentiality, expediency, and insufficient numbers of in-house investigators. As stated in our report, we agree that extenuating circumstances surrounded the need to obtain investigation services quickly. However, we disagree that these reasons continue to be valid. For example, the Division of Legal Services implies that a greater privilege attaches when a contract is passed through an outside attorney than if the same investigation is done through standard procedures. We do not believe this is true. Specifically, if an attorney, whether employed by RTC or as outside counsel, reviews a matter and determines that further investigation needs to be done in support of anticipated litigation, an equally valid argument can be made that the investigation is a part of the attorney work product whether the investigator was hired by RTC through its contracting process, or was hired by outside counsel.

In addition, the Office of Investigations has been given the authority to use Basic Ordering Agreements (BOA's) to contract for investigators. Therefore, because it will be able to provide prompt and sufficient numbers of investigation services, the Legal Division should discontinue the practice of using outside counsel to hire non-legal contractors.

Implement internal controls to ensure adherence to RTC's contracting policies for non-legal services contracting (recommendation 4): As stated

above in recommendation 3, the Division does not intend to discontinue the practice of using outside counsel to hire non-legal contractors, so the Division did not address this recommendation concerning policies to ensure the practice does not happen.

CHAPTER 3

Legal Division Did Not Have Adequate Management Information Systems

The Legal Division's information systems did not capture important information or produce reports the Division needed to adequately manage its operations in accordance with policies, procedures, and statutory requirements and to ensure that it fulfills its responsibilities. The systems, for the most part, were developed before FIRREA gave FDIC responsibility for insuring savings institutions, handling the former Federal Savings and Loan Insurance Corporation's receiverships, and managing RTC. The Legal Division's systems were not designed to handle the workload related to these added responsibilities nor were they designed to capture and report information on various FIRREA requirements, such as those related to Minority/Women Owned Businesses usage and the fitness and integrity of contractors. Further, although the FDIC Legal Division had taken steps to improve its information systems, its actions were not timely and, in some cases, were ad hoc. Additionally, measures taken to ensure the integrity of the data collected or generated during Legal Division efforts to improve its information systems were not adequate. We also do not believe that all current and future information systems needs have been adequately addressed. We recognize that the enactment of FIRREA placed a tremendous burden on the Division, along with the rest of FDIC/RTC. However, planning, developing, and implementing adequate information systems is vital to the Division's success.¹¹

SHORTCOMINGS OF INFORMATION SYSTEMS

The Legal Division had a large number of individual, non-integrated information systems which could not reliably produce needed information. For example, the Legal Division's systems could not provide needed financial related information such as total dollars spent for legal services or amounts paid to individual law firms in any 12 month period. Further, the List of Counsel Utilized database did not have sufficient information to be used as a selection tool by Legal Division attorneys. Also, conflict of interest information was not systematically compiled so that information on conflicts reported by outside counsel or from the Outside Counsel Conflicts Committee was available to Legal Division attorneys selecting outside counsel. Moreover, the Legal Division's Case Management System did not contain adequate information on outside counsel. Specifically, information on when a matter was referred to outside counsel, the extent women and minorities were involved in the legal work, and whether a firm was inherited counsel was not available.

According to the Committee of Sponsoring Organizations of the Treadway Commission, information systems are intrinsic to all control systems and affect a variety of activities of an organization. Information systems include all the processes and actions that identify, move, assemble, classify, record, report, and store information that is needed in an organization to plan, monitor, and execute its activities. The information system must be able to:

- identify economic events and other occurrences that significantly affect the organization and its transactions,
- move information from a point of entry to the various users,
- relate various data to other relevant data,
- classify transactions to accurately reflect the nature of what is happening,
- organize and store the data,
- record the information in a manner that helps management control the entity's activities, and
- produce reliable reports.

Additionally, the information must be delivered in a complete, accurate, and timely fashion to those who need it and in appropriate levels of detail and analysis for

¹¹ Prior reports by both the FDIC Office of Inspector General and outside consultants have cited similar problems. These reports were entitled *Information Management Report for the Legal Division*, Part 1, Hildebrandt, Inc., September 26, 1991; and *Report on the Legal Case Management System*, FDIC/OIG, March 9, 1990.

their use. The information must be stored so that it is available for later use or to meet legal requirements.¹²

The Legal Division needs information systems which can provide detailed comprehensive data for them to manage their operations efficiently and effectively. Legal Division management must know and be able to substantiate whether they are in compliance with certain statutory requirements, such as FIRREA's requirement to maximize to the fullest extent possible the use of women and minorities. The Legal Division was unable to provide complete information regarding minority and women participation in matters referred to outside counsel or to determine how many matters have been referred to outside counsel or when these matters were referred. Legal Division management must also ensure that the Division is in compliance with its own internal policies and procedures, such as the \$2.5 million fee cap.¹³ Further, Legal Division management needs adequate information to manage and control expenditures and to ensure that qualified outside counsel are selected to handle legal matters.

Reliable Financial-Related Information Was Not Readily Available

The Legal Division was unable to reliably determine how much was spent for legal services or the dollar amount of contractual commitments with outside counsel. There was no centralized system to capture nationwide financial data. The Legal Division systems captured only limited financial information supplied by outside counsel. This information included the fees and expenses incurred to date and the estimated fees and expenses required to complete the case.

The FDIC's general ledger system captured financial information on legal bills paid by the Corporation. Some entities, such as conservatorships, pay legal bills directly—not through FDIC's Accounts Payable Unit. Because these payments were paid directly, the information was not captured in the FDIC general ledger. According to a joint FDIC/RTC news release, these direct paid expenses represented about 50 percent of all FDIC/RTC legal expenditures.

The reliability of the information recorded in FDIC's general ledger system was questionable because of three significant internal control weaknesses within the bill paying process performed by FDIC's Division of Accounting and Corporate Services (DACS). First, DACS did not have a control mechanism in place within its check authorization system to identify payments approved for identical invoice numbers until November 1990. Second, there was no control mechanism to verify whether a matter being billed was actually authorized by the Legal Division. Lastly, DACS paid invoices without requiring the vendor to provide a unique invoice number. Instead, DACS would "create" invoice numbers for the invoices. Each of the three internal control weaknesses identified introduced significant levels of risk that overpayments or unauthorized payments could be made to outside contractors being paid through the FDIC general ledger system. Moreover, DACS' ability to detect overpayments and unauthorized payments to outside counsel was severely curtailed because invoices received from outside counsel were not logged in and tracked through a single standardized system. As a consequence, neither the regional offices nor headquarters were able to provide a single listing of all invoices received for review and approval to compare against actual payments made to outside counsel.

Information not captured by FDIC's general ledger, such as payments made directly by conservatorships, was gathered through alternative methods. The reliability of this information was also questionable. To gather information on 1990 legal expenses not captured in FDIC's general ledger, the Legal Division sent information requests to the conservatorships which directly paid legal expenses. The Division asked the conservatorships to estimate amounts paid during the first three quarters of 1990 and the anticipated amounts to be paid in the fourth quarter of 1990. The Legal Division was unsure as to whether complete information was captured using this method of data collection because a substantial number of the conservatorships did not respond to the information request. The lack of reliable information regarding payments made outside the FDIC general ledger system also made it impossible for the Legal Division to reasonably determine how much had been paid to individual law firms. In an effort to comply with the Legal Division's \$2.5 million cap policy, regional office personnel routinely called the individual law firms and asked

¹² *Internal Control-Integrated Framework*, Exposure Draft, March 12, 1991, Committee of Sponsoring Organizations of the Treadway Commission.

¹³ On February 13, 1991, the Legal Division established a policy which limited the fees outside counsel could receive to \$2.5 million in any 12 month period. Fees from RTC and FDIC are separate for purposes of determining whether the cap has been reached. The Legal Division believed that this policy would promote more efficient and economical legal services. Nonetheless, the fee cap could be exceeded upon written approval from designated FDIC officials.

how much the firm had been paid in the last 12 months before referring new matters to that firm.

Subsequent to the August 1991 completion of our field work, RTC Legal Division implemented its management information system—RTC Legal Information System (RLIS). This system is budget-based and requires outside counsel to submit a budget of expected fees and expenses associated with an assigned matter to receive payment. On February 18, 1992, the RTC Legal Division established RLIS policies and procedures. These procedures indicate that RLIS will provide the Legal Division with a broader spectrum of much needed information. All invoices submitted by outside counsel, including those of firms providing services to conservatorships and Standard Asset Management and Disposition Agreement contractors, must be submitted to the Legal Division to be recorded in RLIS. By recording this information in RLIS, the Division should be able to more accurately determine the invoices received and the related legal fees and expenses. Further, the procedures provide for additional controls over outside counsel invoices, such as requiring a unique invoice number. RLIS is set up to reject invoices with duplicate invoice numbers.

Because RLIS is a budget-based system, it should provide the Division with more financial-related information and allow the Division to monitor estimated fees and expenses and to ensure that matters and associated fees and expenses have been approved by the Division. This information should enable the Division to monitor and enforce the \$2.5 million fee cap. However, RLIS currently has limited standardized reporting capability which may hinder the Division's efforts in monitoring Legal Division operations. While RLIS has ad hoc reporting capabilities to extract required information, this technique is very time consuming; thus, less efficient.

LCU Database Did Not Provide Sufficient Information

Legal Division attorneys stated that they could not use the List of Counsel Utilized as provided by headquarters to select outside counsel to represent the Legal Division. The List of Counsel Utilized database included information on the firm's location, telephone number, and contact person but did not include other necessary information. Specifically, it did not include information on a firm's expertise, hourly rates, conflicts of interest, or performance evaluations. As a result, many Legal Division field attorneys did not use the List of Counsel Utilized when selecting firms. Instead, they relied on their past experiences with firms with which they or their colleagues were familiar. Further, the regions had developed their own unique list of firms to compensate for not having an adequate national database. Regional lists, such as the one in the Southwest Region, indicated the firms' rates and expertise. In general, the firms on the regional lists were also on the headquarters List of Counsel Utilized. At the headquarters level, PLS also maintained its own list of firms which was supported by a unique database developed by PLS. This database contained information as to whether a firm was restricted from receiving new work, the firm's expertise, conflicts of interest, and performance evaluation. However, PLS' list contained firms which were not on the LCU. Many field attorneys called PLS to obtain information on conflicts and outside counsel performance which is not readily available to them through other means.

RLIS contains a database of outside counsel approved by the RTC Legal Division to provide legal services. Legal Division personnel stated that this database or List of Outside Counsel includes all firms who have executed an RTC Legal Services Agreement. The database contains information such as a firm's office locations, service area, contact information, and Federal Tax ID similar to information provided by the old List of Counsel Utilized. However, the List of Outside Counsel provides additional information such as the firm's rate structure and limited conflict of interest information on outside counsel. Nonetheless, RLIS does not appear to provide information in two areas—a firm's expertise and performance evaluations. The RTC Legal Division has recognized the need for firm expertise in RLIS and intends to include this information in future RLIS enhancements. Readily available information on a firm's performance also is crucial to ensure that only superior performing firms render services to the Legal Division and ultimately to the Division's client—RTC.

Conflict Of Interest Information Was Not Readily Available

No centralized system captured information on conflicts of interest and made the information available to Legal Division attorneys referring matters to outside counsel. Conflicts of interest reported by outside counsel were not logged in or tracked centrally.

Limited conflict of interest information, such as a brief recapitulation of the conflict and the Outside Counsel Conflicts Committee (OCCC) decision, was maintained by a member of the OCCC in a WordPerfect® file on his personal computer. Data

retrieval and processing under this arrangement was only marginally adequate because WordPerfect® is a word processing software package which is unable to organize information in a useful manner such as by type of conflict or by numbers of conflicts for a particular firm. Additionally, there was no efficient means for anyone, other than the OCCC member or his secretary, to access these files because the information was resident and accessible only on the OCCC member's computer located in his office or in the chronological paper files maintained by his secretary. As a result, without an interface between other potential users of this information, such as the preparers of the headquarters List of Counsel Utilized, the information only benefited the immediate members of the OCCC.

Additionally, only information related to OCCC decisions was available in this file. There were no systems in place to record self-reported conflicts received from outside counsel. As a result, we were unable to determine how many self-reported conflicts of interest were received and whether all self-reported conflicts were properly forwarded to the OCCC for consideration.

RLIS contains limited conflict of interest information. The system shows whether or not a firm has a conflict and also provides a brief description of the conflict. However, after RLIS was implemented, the Legal Division realized that the limited conflicts information to be contained in RLIS was not adequate for its purposes. Also, RLIS would have required extensive changes to meet the Legal Division's needs which would have been too costly. Therefore, the Legal Division decided to develop another management information system to disseminate conflict of interest information to all Division offices. The Division expects this system to be operational by October 1, 1992.

Case Management System Did Not Provide Sufficient, Reliable Information

The Legal Division could not determine whether all matters referred to outside counsel were entered into the Case Management System (CMS). For matters entered into CMS, the Legal Division could not determine the date the matter was referred to outside counsel. The date a matter was actually referred to outside counsel is an important internal control mechanism. This date is necessary to detect such things as whether outside counsel billings reflect work done only after the matter was referred and whether Legal Division staff were referring new matters to firms which may be restricted from receiving referrals—such as when the firm has a conflict of interest pending before the Outside Counsel Conflicts Committee. CMS only captured the date that the CMS technician entered the case data into the system, which according to the CMS Manager, often bears little relation to the date the matter was referred. The only way to determine the actual date of referral was to search the individual case files maintained by the individual Legal Division attorney handling the matter. In an example provided by the CMS Manager, a matter was referred to outside counsel in April 1989, but was not entered into CMS until February 1991—22 months later. Because of this weakness, the Legal Division was unable to determine the number of matters referred to outside counsel during 1990 and the date of referral.

The Legal Division was unable to provide complete information regarding minority and women contractors' participation in matters referred to outside counsel. Although the Legal Division required minority and women participation information to be reported on outside counsel's invoices, the receipt, reporting, and recording of the information was not enforced. As a result, to obtain minority and women participation information, the Legal Division had to query two sources outside the Legal Division for information. First, the Legal Division requested the DACS Accounts Payable Branch to provide a report detailing the amounts paid to outside counsel which are classified as minority or women owned businesses. Second, the Legal Division requested minority and women participation reports from outside counsel. Response to these information requests from outside counsel was voluntary and only about 60 percent of the outside counsel responded. There were no controls in place to verify the reasonableness of the data received from outside counsel, short of auditing each outside counsel's response.

The Legal Division also could not adequately identify through CMS inherited counsel—those firms who were pursuing matters at the time an institution was placed into receivership.

According to Legal Division procedures, no new matters were to be referred to inherited counsel without a Legal Services Agreement. Inherited counsel were to complete only those matters they were working on at the time of the institution's receivership. CMS did not identify which counsel were inherited and how long they had been representing the Legal Division. As a result, the Legal Division was unable to determine whether a firm receiving payments was an inherited counsel, how long inherited counsel had been representing the Legal Division without a Legal Services

Agreement, and whether inherited counsel were being referred new matters in violation of Legal Division procedures.

The February 18, 1992, *RLIS Office Procedures Manual for RTC Legal Matters* requires outside counsel, when submitting an invoice to the Legal Division, to complete a form entitled "Legal Invoice for Fee & Expenses (LIF & E)." Information provided on this form includes fees billed by women and minority attorneys. The procedures further provide that RLIS Data Technicians, upon receipt of the LIF & E, examine the document for missing information and, if necessary, return the invoice documentation to outside counsel for proper completion. If properly implemented, these procedures should provide the Division with more complete information on women and minority participation.

The procedures also address inherited outside counsel. Upon intervention in a failed institution, Legal Division personnel identify ongoing matters and the firms handling these matters. If a firm is not listed in RLIS' List of Counsel, the firm is then identified in RLIS as inherited. The procedures require that the firm not accept new matters until it has executed an RTC Legal Services Agreement. Further, if no agreement is executed within 90 days of intervention, then the RTC attorney in charge of the matter is required to transfer the matter to another firm.

INFORMATION SYSTEM NEEDS WERE NOT TIMELY OR EFFICIENTLY MET

The Legal Division's information needs were not met in a timely or efficient manner. Further, long-range goal setting and strategic planning for such things as future information needs, technological changes, cost controls, and data integrity had not occurred. As a result, the Legal Division was beset by a proliferation of many different information systems capturing the same information both within a region and across the Nation. Without thorough planning and goal setting to address future information needs and changes, the Legal Division will be destined to follow a reactive role to its changing environment and risks periodic loss of control over its ability to meet its information requirements and respond to changes and challenges most effectively.

Contractors were designing two major information systems for the Legal Division. The first system is the Legal Division Information Management System (LDIMS), which was solicited to address the needs of the various branches within the Legal Division. LDIMS will not be available until late 1992. The second system was the RTC Legal Information System (RLIS). Its original purpose was to enable the RTC Branch to manage matters referred to outside counsel by Standard Asset Management and Disposition Agreement (SAMDA) contractors, but it has now been expanded to encompass all outside counsel information requirements.

Interviews with various management representatives of the RTC Branch revealed that they were aware that monitoring and managing matters referred to the SAMDA contractors required information that the Legal Division systems could not provide. The RTC Branch information needs were immediate and could not wait until LDIMS was in place—SAMDA contracts were being awarded and no LDIMS completion date had been determined. According to RTC Legal Division staff, there was no management support for a solution to this problem. As a result, a group of RTC Branch attorneys contracted with Power Computing Corporation to design and produce RLIS and obtained funds from the RTC Contractor Database budget to fund the endeavor. The system design has undergone two major revisions since its inception. One change broadened the system application to include all RTC case information needs, not just SAMDA contractor information requirements. The other change incorporated an accounts payable module. The system was developed ad hoc, without proper technical oversight, and without adequate planning and support by Legal Division management.

The challenges faced by the Legal Division to secure adequate information systems were complicated by the fact that throughout the Legal Division there was very little control or standardization with regard to personal computer based software applications. At every functional area, between regions and consolidated offices, and not uncommonly, between Legal Division staff working at the same location, different personal computer based systems have been developed on an ad hoc basis to capture and process similar information. To illustrate, the Professional Liabilities Section referred matters to outside counsel yet it did not use CMS. Instead, PLS maintained its own separate R-Base software application. This system provided detailed information on the matters being pursued and the outside counsel being used by PLS, but because R-Base is a software package which had not been approved for use by FDIC's Management Information Systems Branch (MISB), PLS could not get technical support from MISB. Systems to capture and track important information differed between regions and between consolidated offices.

In addition to a lack of control over personal computer based software applications, the Legal Division had not adequately addressed its current or future data integrity needs. Without proper control over the quality of the information going into CMS or the successor systems, funds and efforts to enhance or replace current information systems may be expended needlessly. RTC Branch attorneys estimated that approximately 75 percent of the information in CMS was RTC-related. However, the RTC Branch stopped entering data into CMS and began recording new referrals into RLIS as of October 28, 1991. RLIS had not been completed or tested and training for the new system had not been completed.¹⁴ As a result, no parallel system existed to which to compare data accuracy once RLIS had been completed and tested. Instead, the Legal Division will have to continue to rely on outside counsel to identify what matters they are working on and to provide the data required to be input into RLIS. Because the adequacy of internal controls in place at each individual outside counsel is unknown, the reliability of the data they provide is also unknown.

Since the completion of our field work in August 1991, most of RLIS, including the accounts payable module, has been implemented. The latest implementation steps provide further evidence of a lack of strategic planning, which resulted in RLIS having limited standardized report generating capabilities and lack of sufficient conflicts of interest information.

The RLIS report committee met for the first time on July 31, 1991, only 3 months before RLIS was implemented. Because RLIS can produce few standardized reports, ad hoc reporting must be performed to extract information for use by the Legal Division in managing its operations. Legal Division personnel stated that information had to be obtained using a query function which was extremely time-consuming. Had the Legal Division identified the format and the information needed while designing RLIS, a more efficient use of time and resources would have occurred and the Division would have been able to more readily use the information in RLIS.

The Legal Division is also developing a new conflict of interest management information system because the information in RLIS does not meet its needs. Had the Legal Division identified needed conflicts information during the planning stages of RLIS, the additional system might have been unnecessary.

CONCLUSION AND RECOMMENDATIONS

The lack of adequate management support and planning of information systems and needs left the Legal Division unable to produce reliable timely management information more than 2 years after the passage of FIRREA. Moreover, the lack of adequate goals and planning casts doubt on the ultimate success of the Legal Division's management information systems.

We recommend that the Senior Vice President and General Counsel work in conjunction with RTC's Office of Corporate Information and the Software Development Office to:

(5) Perform an assessment of immediate and long-term information needs to develop specific short- and long-term goals and objectives for the Legal Division's information systems. Develop strategic plans for attaining these goals and objectives and identify resources needed. Adequate internal controls should be identified for these systems during this planning process.

(6) Develop sufficient standardized reporting capability so that the Division has readily accessible information to monitor and manage outside counsel.

CORPORATION COMMENTS AND OIG EVALUATION

A summary of the Corporation's response to each of our recommendations and our analysis follows:

Develop specific short- and long-term information systems goals and plans to reach those goals (recommendation 5): Although the Division's response does not address performing a needs assessment or developing long-term plans, it does state that the RLIS Steering Committee is responsible for evaluating the operations of the system to plan for future enhancements and adjustments. In addition, in its response, it states that the Committee continually reviews the progress of the RLIS database and the developing information needs of the Division.

Although we encourage the actions the Division is taking as outlined above, these actions do not go far enough to ensure that the Division's systems will address its needs not only today, but in the future. Because it had not conducted a needs assessment before it developed RLIS, it is now having to develop an additional system

¹⁴ RLIS Operations Workshop was conducted by the Centech Group for the Legal Division during the last quarter of 1991. On February 18, 1992, the Legal Division issued policies and procedures for using RLIS.

to track conflicts of interest information and having to make adjustments to the information RLIS is gathering to add necessary information fields. Therefore, we recommend that the Division develop systems goals and plans to reach those goals.

Develop standardized reporting (recommendation 6): The Senior Vice President and General Counsel's response stated that RLIS is now capable of generating standardized reports covering a variety of information. RLIS' increasing capability to issue standardized reports addresses our recommendation. We will need to review documentation showing the standardized reports to close our recommendation.

CHAPTER 4

Poor Controls Led to Overpayments

The Legal Division review process for outside counsel invoices and the program the Division used to pay these invoices allowed overpayment of outside legal counsel. The Division did not have an adequate oversight mechanism to ensure the effective functioning of the review process and did not provide sufficient guidance to the Legal Division staff responsible for performing the review. Additionally, one program used to pay outside counsel invoices—the Accelerated Payment Program (APP)—did not allow all overpayments to be identified before or after they were paid. Under the APP, outside legal counsel was paid before the Legal Division reviewed the outside counsel's invoices. Also, the APP post-payment review, or reconciliation between the amount paid and the amount approved for payment by the Legal Division, was only required on a sample of invoices and therefore, could not identify all overpayments.

Invoice Review Process Was Not Adequate

The review process for outside counsel invoices was not adequate to verify correctness and to identify inappropriate or questionable charges. We attribute this condition to the lack of an oversight mechanism and adequate guidance for Legal Division staff responsible for performing the review and to the implementation of the Accelerated Payment Program. The Accelerated Payment Program reduced the incentive for Legal Division personnel to perform an adequate review because invoices no longer required review and approval for outside counsel to receive payments. The lack of an adequate review of outside counsel invoices had resulted in potential overpayments to outside counsel. We identified almost \$300,000 in charges submitted by outside counsel on invoices totaling \$3.5 million which we believe to be questionable. Further, the Legal Division had reported receiving from outside counsel over \$10 million in refunds due to overpayments—mostly duplicate payments—from November 1990 to September 1991.

The Legal Division, in a brochure provided to outside counsel entitled *A Law Firm's Guide: How to be Considered for Retention by The FDIC and RTC* and the Legal Services Agreement, outlined the charges that the Legal Division would not pay. These charges include:

- a firm's educational or developmental cost associated with becoming familiar with statutory and case law pertinent to FDIC and RTC;
- a firm's overhead expenses including (1) secretarial or clerical overtime, unless such overtime is occasioned by an emergency situation created by FDIC/RTC; (2) charges relating to word processing or computer time, except actual charges for Westlaw® or Lexis® which will be reimbursed; and (3) the preparation of fee bills;
- first class travel or luxury hotel accommodations;
- an amount above 50 percent of an attorney's rate when the attorney is in actual travel status;
- photocopying charges exceeding \$.15 per page;
- faxes exceeding actual cost and excess faxes;
- excess overnight mail; and
- ordinary postage charges.

Further, the Legal Division's Procedural Memorandum 1.10, *Fee Bill Processing*, requires the supervising attorney to review invoices for reasonableness and cost consciousness.

Nonetheless, the Legal Division in some instances did not (1) ensure the appropriateness of charges on outside counsel invoices, (2) verify the rates charged by outside counsel to the agreements establishing outside counsel rates, or (3) conduct any review of outside counsel invoices. There were no controls in place to ensure that expenses, such as legal research, were approved and a work product received by the Legal Division. Although quantifying invoices with inappropriate charges was not one of our initial objectives, we did identify and quantify inappropriate charges at two Legal Division locations—headquarters and the North Central Region. In total, we found almost \$300,000 of questionable charges on invoices totaling approxi-

mately \$3.5 million. Sixteen of 50 Washington invoices and 29 of 120 Kansas City invoices contained questionable charges. Table 3.1 shows the questioned charges by location.

Table 3.1: Questioned Charges

QUESTIONED CHARGES	NORTH CENTRAL REGION	HEADQUARTERS	TOTAL
Research	\$56,850	\$17,034	\$73,884
Photocopying	35,167	74,156	109,323
Travel	24,873	16,726	41,599
Fax/Delivery/Postage	7,245	1,596	8,841
Senior Partner Participation on Depositions	3,825	0	3,825
Telephone	2,713	1,160	3,873
Overtime	0	38,079	38,079
Temporary Services	0	1,597	1,597
Business Meals	0	830	830
TOTAL	\$130,673	\$151,178	\$281,851

In the Southwest Region, we identified questionable charges related to senior partner participation on depositions on 4 of 91 invoices reviewed and in the Western Region, we identified charges for such participation on 4 of 111 invoices. We also found senior partner participation on 4 of 120 North Central Region invoices. Depositions involve recording an individual's statement under oath and are usually fairly straightforward processes which may not generally require senior partner participation. However, because of the limited scope of our audit, we did not contact outside counsel to determine whether or not these charges were appropriate. Regardless, responsibility for ensuring appropriateness rests with the Legal Division and in these instances they did not question the charges. In the Western Region, we identified a single invoice with over \$24,000 of charges for a senior partner to attend depositions. The rates charged by this firm were also in excess of the established hourly rates by \$80. In the Western Region, we also found that travel time was not billed at 50 percent of the firms' established rate on 9 of 120 invoices, as required by Legal Division policy.

In the Southwest Region and Washington headquarters, some invoices were not reviewed by Legal Division staff. In the Gulf Coast Consolidated Office of the Southwest Region, invoices submitted by outside counsel for services rendered to conservatorships which were less than \$5,000 were not reviewed by Legal Division staff. In headquarters, one fee bill technician of the four interviewed was not reviewing invoices at all until the APP reconciliation process began. Although review of all invoices is required under the APP, the Legal Division under the APP reconciliation process required a review of only a sample of invoices. Therefore, by waiting until the reconciliation process began, the fee bill technician would be required to review fewer invoices.

Also, outside counsel did not always have established billing rates with the Legal Division as evidenced by an executed Legal Services Agreement (LSA). Even when the Legal Division did have an executed LSA with outside counsel, the LSA was not always located at the same office where the invoices were reviewed. Further, the LSA was not used to ensure that outside counsel's fees agreed with the LSA. The rates billed on the invoices did not always agree with the rates established within the LSA. The Legal Division required outside counsel to execute a Legal Services Agreement upon retention. This agreement discloses the names of the legal firm's employees who may work on FDIC/RTC matters and their rates.

In our sample of 114 firms,¹⁵ 69 percent either did not have an executed LSA with the Legal Division or an LSA could not be located at the consolidated offices. In some instances, the firms' LSAs were filed at FDIC offices, but copies were not filed with RTC offices within the same region. Further, rates on sampled invoices did not concur with the rates established in the LSA for more than 30 percent of the invoices in our sample which had LSAs. In other instances, the names and rates charged by outside counsel could not be confirmed with the LSAs because the LSAs did not include the names and rates of all outside counsel employees working on FDIC/RTC Legal Division matters. Table 3.2 shows the results of our analysis by location.

Table 3.2: Sampled Firms Without Legal Services Agreements and Sampled Invoices That Disagreed With Available Legal Services Agreements

LOCATION	PERCENTAGE OF FIRMS WITHOUT LSAs	PERCENTAGE OF INVOICES WHICH DISAGREED WITH LSAs
Eastern Region	70%	35%
Southwest Region	52	7
Western Region	93	50
North Central Region	70	39
Headquarters	14	40

The Legal Division also did not ensure that legal counsel inherited from failed institutions executed a Legal Services Agreement before new Legal Division matters were assigned to the firm. Because inherited counsel did not always have agreements with the Legal Division establishing rates and reimbursable expenses, the rates paid by RTC may have been higher than rates established in the LSAs for similar firms in the same geographic location.

Prudent business practice would dictate (1) an in-depth review of invoices to ensure that the charges are correct and (2) establishing rates/reimbursable expenses with outside counsel by executing an agreement for services. The U.S. General Accounting Office's *Assessing Internal Controls in Performance Audits* provides, as a general standard, that internal control systems are to provide "reasonable assurance" that the objectives of the systems will be accomplished. An objective of an invoice review process should be to ensure the correctness of the invoices and to identify any deficiencies. However, the Legal Division's review process did not provide reasonable assurance that outside counsel invoices were correct.

We attribute the inadequacies of the invoice review process to several factors. First, the Legal Division's procedures on invoice review, as stated in Procedural Memorandum 1.10 *Fee Bill Processing*, were not adequate. These procedures did not provide a comprehensive list of inappropriate charges, provide specific guidance on performing invoice reviews, or require the use of the LSA to verify the names and rates of outside counsel employees on the invoice.¹⁶ Further, the Legal Division did not have an oversight mechanism to ensure that the review process was adequately performed or to diagnose problems in the review process. Finally, under the Accelerated Payment Program instituted by the Legal Division in October 1990 to expedite payment of outside counsel invoices, invoices no longer had to be reviewed and approved by the Division for outside counsel to receive payment. This program removed any incentive for the Legal Division staff to perform a thorough review of the invoices because the firms received payment regardless of the results of the Legal Division's review. By not ensuring the appropriateness of outside counsel expenses, verifying outside counsel employees and their rates on the invoices to the

¹⁵The Legal Division considers each law firm office as a separate law firm. Each law firm office is listed separately on the LCU. Therefore, our use of the term "firm" may include multiple offices of the same firm.

¹⁶A *Law Firm's Guide: How to be Considered for Retention by the FDIC and RTC* provided only limited guidance on inappropriate charges and was intended for external use.

LSAs, or reviewing invoices, overpayments of outside counsel have occurred and the potential for significant undetected overpayments is great.

The Legal Division is reconciling, on a sample basis, the amounts paid to outside counsel under the Accelerated Payment Program and the amounts approved for payment by the Legal Division to detect overpayments. The Legal Division is also pursuing collection efforts to recoup overpayments identified during the reconciliation process. The Legal Division reported receiving refunds totaling over \$10 million from November 1990 to September 1991 from outside counsel.

Subsequent to the completion of our fieldwork in August 1991, the RTC Legal Division implemented RLIS' payment module. During the last quarter of 1991, the RTC Legal Division informed outside counsel that after January 1, 1992, the APP would be discontinued.

Under RLIS, invoices exceeding \$5,000 are required to be reviewed by Legal Division personnel before payment. However, in certain instances, such as when the Legal Division has concerns over a firm's billing practices or when the firm is handling a significant matter, all invoices submitted by the firm may be selected for review. Also, every 50th invoice is to be reviewed. In addition, according to Division personnel, they have contracted with a firm to set up a statistically valid review process.

Other changes have also occurred in the review process. In February 1992, the RTC Legal Division issued the *RTC Guide for Outside Counsel* which identifies reimbursable and nonreimbursable charges. This guide has incorporated some of the same charges identified in an earlier FDIC publication, *A Law Firm's Guide: How to be Considered for Retention by The FDIC and RTC*. However, the RTC Legal Division has not yet issued its own invoice review procedures and by default, still adheres to FDIC Legal Division's Procedural Memorandum 1.10. As mentioned in Chapter 4, Procedural Memorandum 1.10 was not adequate because the procedures neither provided a comprehensive list of inappropriate charges nor specific guidance on performing invoice reviews. To improve the review process, the RTC Legal Division intends to include a checklist in RLIS to document invoice review.

For those invoices required to be reviewed under RLIS, the invoice processing procedures require verification of the invoice rates to the Legal Services Agreement. The procedures also require verification between the employees listed on the invoice and those listed in the Legal Services Agreement. In instances where employees on the invoice do not agree with the Legal Services Agreement, the Legal Division will request the firm to provide a new provider list.

THE ACCELERATED PAYMENT PROGRAM ALLOWED OVERPAYMENT OF OUTSIDE COUNSEL

The Accelerated Payment Program (APP) resulted in overpayment of outside counsel. The APP did not allow the Legal Division to identify overpayments before payment. Additionally, the APP reconciliation process used by the Legal Division and DACS to retroactively review invoices does not provide for the identification and collection of all overpayments to outside counsel.

As discussed in Chapter 1, the Legal Division implemented the Accelerated Payment Program in October 1990 to expedite payment of the large backlog of outside counsel invoices. The APP allowed outside counsel to submit a payment request directly to DACS, without review by the Legal Division, and to receive payment for the full amount requested. Outside counsel also had to submit an itemized invoice to the Legal Division for review and approval. On October 31, 1991, the FDIC Legal Division discontinued the use of the APP to pay outside legal counsel and implemented the Legal Services Invoice Program on November 1, 1991.¹⁷ The RTC Legal Division discontinued the APP and implemented the RTC Legal Information System's payment module on January 1, 1992.

The Legal Division and DACS began a reconciliation program in May 1991 to compare, on a sample basis, the amounts paid to outside counsel under the Accelerated Payment Program to the amounts approved for payment by the Legal Division to determine overpayments. DACS selected a random sample of paid invoices and requested Legal Division staff in the regions to review these invoices to identify any disallowed charges for the selected invoices. If any were found, Legal Division staff were then to send demand letters to the outside counsel requesting that outside counsel remit refunds to Legal Division headquarters.

¹⁷ Invoices submitted by outside counsel for services rendered to FDIC or RTC in their receivership and corporate capacities were paid through the APP. Outside counsel invoices related to conservatorship activities were not included in the APP—each individual conservatorship was responsible for paying its own invoices. However, conservatorships were required to submit outside counsel invoices to the Legal Division for review and approval.

In the Southwest Region, we found instances where outside counsel received payment through the APP to which they were not entitled. Because the reconciliation process is based on a sampling methodology, the Legal Division will not be able to determine all instances where outside counsel received payment for which they were not entitled. As a result, outside counsel will be overpaid by an undetermined amount.

Specific instances of overpayment in the Southwest Region included:

- Outside counsel submitted payment requests to DACS which included current and past due amounts although the Legal Division had instructed outside counsel to exclude past due amounts on payment requests. Outside counsel received payment for the total amount requested to be paid, including past due amounts. They also received payment for past due amounts on the previously submitted invoices. This double-billing resulted in duplicate payment of the amount billed as past due. For example, we documented two legal firms that billed DACS for over \$3,000 in total for past due amounts. Because this amount had already been submitted to DACS for payment on previous payment requests, the firms will receive overpayment of over \$3,000. Unless DACS selects these invoices for review under the reconciliation process, the overpayment will not be detected or collected.
- Outside counsel submitted payment requests to DACS for services rendered to conservatorships. One firm received payments totaling over \$14,000 from DACS which should have been paid by the conservatorship.
- Outside counsel submitted payment requests for charges that the Legal Division disallowed under the Payment Authorization Voucher Program. This program was the precursor to the APP and required that the Legal Division review and approve all outside counsel invoices prior to payment by DACS. In one example, the Legal Division disallowed over \$500 in fees for one firm. This firm later billed DACS under the APP for the disallowed amount and received payment.
- Collection activities were not pursued for large amounts of disallowances identified by Legal Division staff. One invoice, brought to our attention, contained disallowances of \$80,000. However, Legal Division staff did not pursue recouping these costs. Meanwhile, the legal firm went out of business, which will cause the Legal Division difficulties in recovering any funds.

Even though the examples represented are from the Southwest Region, we believe the problems represented could be systemic throughout all the regions because of the weak internal controls in the review, approval, and payment of outside counsel invoices. The U.S. General Accounting Office's *Standards for Internal Controls in the Federal Government* requires, as general standards, that management maintain and demonstrate a positive and supportive attitude toward internal controls and establish control objectives and control techniques. The Standards require an agency to establish control objectives by cycle (in this case, the expenditure cycle) and to establish mechanisms to ensure that the objectives are achieved. Additionally, prudent business practice would dictate a well designed review and payment program—including a system of internal controls—to ensure the payment of only appropriate charges.

The cause of the internal control weaknesses stemmed from the Legal Division's primary concern for expeditiously paying outside counsel. To address a backlog of unpaid legal invoices, the Legal Division and DACS implemented the Accelerated Payment Program but did not ensure adequate internal controls for the risks of the program because of this concern. Although the RTC Legal Division discontinued use of the APP on January 1, 1992, because only a sample of APP payments will be reviewed, all overpayments may not be detected.

COST CONTROLS OVER MATTERS REFERRED TO OUTSIDE COUNSEL WERE NOT ADEQUATE

The Legal Division did not have adequate controls in place to manage and contain expenses for the large number of matters referred to outside counsel under FDIC's Case Management System. The limited controls which the Legal Division did have were not applied consistently or to the extent necessary to be effective. The Legal Division used two methods of control over outside counsel—monthly status reports and case budgets. However, neither of them were effective. The monthly status reports, in fact, were potentially very costly. The monthly status reports from outside counsel provided estimates every month of the costs and time required to resolve a particular matter. The status report also provided outside counsel's latest estimate of its probability of success in the matter. Legal Division attorneys reviewed the monthly status reports to monitor the progress of referred matters. However, the Legal Division did not analyze the monthly status reports for significant changes in costs, estimates of costs, or time to complete the matter and reports of exceptions were not produced. Because the Legal Division did not prepare trend analysis excep-

tion reports on the status reports and because of the large volume of matters being monitored by Legal Division attorneys, the monthly status reports' effectiveness as a control mechanism was very limited.

In addition to their limited effectiveness, the monthly status reports were also costly. The Legal Division allowed outside counsel to bill for the preparation of the monthly status reports, but did not provide definitive billing guidelines. As a result, outside counsel billed a variety of flat rates and hourly rates for the preparation of the reports. For example, in the Southwest Region, billing rates for the monthly status reports ranged from \$20 (flat fee) to \$234.00 (which included a \$9.00 charge to deliver the status report and invoice to a local regional office). The Legal Division estimated that it received about 81,000 invoices for RTC-related matters each month. Using a conservative approach by assuming the Legal Division paid \$20 per month for a status report on 81,000 monthly matters, the Legal Division would pay nearly \$19.5 million in 1 year to outside counsel for status reports on RTC-related matters.

The Legal Division also used case budgets to control costs of matters referred to outside counsel. The case budget was also a weak cost control mechanism because the Legal Division did not require the consistent use of case budgets for every matter referred to outside counsel. Additionally, the criteria for determining when a case budget was required were unclear. The FDIC's Guide for Legal Representation stated that upon referral, outside counsel should submit with a case plan an estimate of the following: (1) legal fees and expenses to judgment or other completion; (2) the date judgment or completion was expected; and (3) the probability of success, stated as a percentage. These estimates, which were updated monthly through status reports, were used to determine whether an individual matter was cost-effective and as a benchmark to measure progress. If the estimates were substantial, outside counsel would be required to submit a budget. At a minimum, the budget was to set forth major assumptions, conform to the case plan, identify specific phases of a case, and estimate the cost of each phase.

The term "substantial" was too vague to determine when a case budget should be prepared and further definitions or benchmarks for determining "substantial" were not given in FDIC's Guide or procedural memorandum. Each Managing Attorney relied on his/her professional judgment in determining what was substantial and whether a case budget was adequate when prepared. As a result, the Legal Division did not have adequate and effective cost controls in place to contain outside counsel costs. In addition to potential cost savings not being realized, the Legal Division was also not taking full advantage of controls such as case budgets which would provide greater overall management control over operations.

Since the August 1991 completion of our fieldwork, the RTC Legal Division has issued new policies and procedures concerning the use of status reports and case budgets. The RTC Legal Division's new *RTC Guide for Outside Counsel* states that RTC will not pay for the preparation of invoices or routine status reports. However, in the *Outside Counsel Deskbook*, the RTC Legal Division permits outside counsel to bill up to 4 hours for preparation of the Division's Evaluation, Referral, and Budget Form and case plan which identifies the strategy for pursuing and completing a matter.

In addition, RLIS is a budget-based system and requires completion of a budget by outside counsel for each matter. Unless RLIS has a budget for a matter, invoices submitted by the firms will not be paid. Inherent to budget-based systems, the ability to determine the budget's reasonableness is key in controlling costs. The *RLIS Office Procedures Manual for RTC Legal Matters* provides that an RTC Attorney review the budget submitted for reasonableness and obtain approval from a Supervisory RTC Attorney for the budgeted amount. However, the procedures do not provide guidance on determining reasonableness. RTC Legal Division personnel indicated that RTC attorneys would be provided one-half day of training on case budgets. This limited amount of guidance and training may not be adequate for a management information system whose primary cost controls rests, not in invoice review, but in up-front case budgeting.

RECOMMENDATIONS

We recommend that the Senior Vice President and General Counsel:

- 7) Ensure that Legal Division personnel seek approval through the RTC Legal Division's delegated authority for any staffing amendments or rate changes by outside counsel to the Legal Services Agreements. Legal Division staff should not approve for payment any invoice amount that pertains to services rendered by unapproved outside counsel employees.

- (8) Revise invoice processing procedures to incorporate a comprehensive list of inappropriate charges.

(9) Enhance and standardize training on the review process policies and procedures to include reviewing invoices for accuracy and identifying prohibited charges and determining the reasonableness of case budgets submitted by outside counsel.

(10) Establish an oversight/review mechanism to ensure that Legal Division staff adhere to the invoice processing policies and procedures.

(11) Consider incorporating responsibility for internal controls into each management level employee's performance standards.

CORPORATION COMMENTS AND OIG EVALUATION

A summary of the Corporation's response to each of our recommendations and our analysis follows:

Ensure personnel seek approval for staffing amendments or rate changes (recommendation 7): According to the Division's response, it will not pay an invoice charging rates different than those listed on the Legal Services Agreement (LSA) or listing attorneys not identified on the LSA, unless approved by the appropriate authority. The Division's response does not fully address our recommendation because it does not outline how it intends to prevent payment of invoices with unapproved changes. We will need to review documentation explaining how it intends to do this before we can determine whether the planned actions address our recommendation.

Revise invoice processing procedures (recommendation 8): In his response, the Senior Vice President and General Counsel said that the *RTC Guide for Outside Counsel* identifies the inappropriate charges which RTC will not pay. The Division also has developed an invoice review checklist for use by legal technicians and attorneys when reviewing invoices. The checklist should address our recommendation, but we will need to review it.

Enhance and standardize invoice review training (recommendation 9): Technicians are trained in their local offices on invoice review procedures. The Division is in the process of training Division attorneys on invoice review procedures, including instruction on evaluating budget reasonableness. The training outlined should address our recommendation, but we will need to review the training manuals and schedules.

Establish an oversight/review mechanism to ensure that staff adhere to invoice processing policies and procedures (recommendation 10): The Division did not address this recommendation in its response.

Consider incorporating internal controls responsibility into each management level employee's performance standards (recommendation 11): The Division did not address this recommendation in its response.

CHAPTER 5

Conflicts of Interest Were Not Adequately Documented and Communicated

Legal Division policies and procedures require that conflicts be reported to the Outside Counsel Conflicts Committee for disposition. Nonetheless, the regions did not report all conflicts to the Committee. Poor controls over receipt of conflict disclosures by outside counsel prevented the Committee from monitoring receipt of conflicts and ensuring they were forwarded to the Committee. By not forwarding conflicts to the Committee, inconsistencies in handling conflicts and claims of favoritism could result. In addition, the Outside Counsel Conflicts Committee's policies for addressing conflicts were not sufficiently stringent and permitted firms whose members had substantial conflicts of interest to receive FDIC/RTC matters. While the Committee adhered to its policies and FIRREA requirements, it should have held these firms to higher standard, reducing the potential for criticism and providing confidence that FDIC/RTC maintains the highest levels of accountability. Further, the method of communicating conflicts decisions throughout the Legal Division did not provide Division personnel responsible for retaining outside counsel with sufficient information. The potential exists that the Legal Division could retain firms with existing conflicts of interest, resulting in criticism and claims of favoritism.

POLICIES WERE NOT SUFFICIENTLY STRINGENT TO PREVENT POTENTIAL CRITICISM OF CONFLICT DECISIONS

The Outside Counsel Conflicts Committee granted waivers to firms whose employees defaulted on substantial loans from insured depository institutions, which represented bidders for RTC assets and wanted to represent the RTC on other matters, and/or which regional Legal Division personnel recommended that a waiver be denied. Although the Committee's decisions fell within its policies and procedures, granting waivers to these firms and allowing them to receive additional FDIC/RTC matters did not fulfill the spirit of FIRREA. Additionally, granting waivers to these

firms could give rise to claims of favoritism by other outside counsel who did not have conflicts, yet did not receive any matters. Further, these waivers increased the potential for public embarrassment and criticism by the Congress.

In one firm, a managing partner, who was also the liaison with FDIC, and an associate of the firm, defaulted as guarantor on a participation loan totaling over \$1 million. The firm did not inform the Regional Counsel or the Outside Counsel Conflicts Committee of this default. However, the Legal Division's Professional Liability Section was aware of the conflict of interest, according to a regional Legal Division attorney, and continued to use the firm, including the managing partner. Further, the Professional Liability Section had not taken or planned to take any action concerning the firm's failure to disclose the conflict. The regional attorney later disclosed the firm's conflict of interest to the Outside Counsel Conflicts Committee and recommended that the Committee waive the conflict because the firm had many years of experience with FDIC and was one of only two outside counsel approved for the geographic area. The Outside Counsel Conflicts Committee acknowledged that the firm was "in violation of RTC regulation for failing to disclose the nature of the debts of certain firm members and associates, and the fact of bankruptcy of one attorney." However, it waived the conflict subject to several conditions designed to screen the partner from working on or benefiting from FDIC/RTC matters.

In another firm, two partners defaulted on loans with failed insured depository institutions. Regional attorneys recommended to the Outside Counsel Conflicts Committee that a conflict waiver not be granted and the firm not be retained as approved counsel. One of the firm's senior partners was a director of a failed depository institution and owed \$600,000 to that institution. He was also a partner in several other partnerships with defaulted loans totaling \$475,000. Another of the firm's partners defaulted on a loan that totaled \$700,000 made to a partnership of which he was a member. The Committee decided to grant a waiver to the firm provided that neither partner was on the firm's management committee or received any profits related to FDIC/RTC matters.

In a third firm, several members had defaulted on loans to failed depository institutions. One partner was obligated as a guarantor on a loan of approximately \$5 million from a failed savings institution. Another partner who was on the firm's management committee was a guarantor and partner of a loan to a joint venture totaling \$700,000 which was in default. The Committee waived the conflicts subject to removal of the partner from the management committee.

In another firm, a partner of a firm who was in default on nearly \$4 million to insured depository institutions received FDIC/RTC work. He was a "name partner"¹⁸ in a firm which received over \$3 million in fees during 1990 from FDIC/RTC. Even though this firm was retained by the Legal Division and working on Legal Division matters, it was not registered as a contractor for FDIC/RTC. When it did apply to become a registered contractor, the firm disclosed the defaults of its name partner. The Outside Counsel Conflicts Committee approved the registration of the firm as a contractor subject to certain conditions including screening the partner from FDIC/RTC matters and prohibiting the partner from sharing in earnings or profits related to FDIC.

Another firm wanted to represent RTC, but had four existing conflicts of interest including the representation of several clients who were potential and actual bidders for RTC assets. It applied for a conflict waiver and the Outside Counsel Conflicts Committee granted the firm a conditional waiver which allowed the firm to represent the bidders for RTC assets.

In another instance, the Outside Counsel Conflicts Committee voted to waive a conflict of interest even though the Southeast Consolidated Office and the Eastern Regional Office recommended against a waiver. A partner in the firm was a defendant in a directors and officers liability suit of a large failed savings institution and the firm was a defendant in litigation involving a different failed institution.

FIRREA prohibits from RTC service any individual who has caused a substantial loss to Federal deposit insurance funds, but it does not prohibit the use of firms whose members have caused losses. The Committee adhered to its procedures for evaluating conflicts and either waived conflicts or erected walls to prevent individuals in these firms from participating in FDIC/RTC matters and/or from receiving any profits. However, these procedures are not sufficiently stringent. With approximately 1,800 firms available for matters and many other firms registered as RTC contractors, the Legal Division has many options available for selecting firms, which may not have conflicts of interest with the FDIC/RTC. In selecting firms for matters, the Legal Division needs to hold firms to a high standard to ensure that the public maintains confidence in FDIC/RTC and that it does not appear that FDIC/

¹⁸ The name of this partner was included in the name of the firm.

RTC is rewarding firms whose members caused significant losses to the insurance funds.

NOT ALL CONFLICTS WERE REPORTED TO THE OUTSIDE COUNSEL CONFLICTS COMMITTEE

Regional Legal Division personnel were aware of conflicts of interest but did not always forward them to the Outside Counsel Conflicts Committee for review. Also, outside counsel did not report potential conflicts as required. Poor internal controls over recording the receipt of reported conflicts in a region allowed conflicts reported to the Regional Counsel to remain unnoticed by Washington headquarters and the Outside Counsel Conflicts Committee. Further, because the Legal Division did not take enforcement action against firms which did not report potential conflicts of interest, firms had little incentive to report conflicts. As a result, firms with potential conflicts continued to receive FDIC/RTC work.

In one example, the outside counsel reported a conflict of interest to a Legal Division regional staff attorney who, in turn, referred the conflict to the Regional Counsel. The firm was representing clients adverse to FDIC/RTC while simultaneously representing the FDIC/RTC in their receivership and conservatorship capacities. A staff attorney stated that these conflicts were "never submitted to the Conflicts Committee because he [the Regional Counsel] saw no need. He does not feel any of these conflicts are that serious and since the firm is not approved or likely to be, he did not believe we should go [to] the Committee with them. You may continue to use the firm. . . ." However, according to Legal Division procedures "no conflict can be waived on behalf of FDIC [RTC] except with the approval of the Committee or its Chairman.

In another example, a firm did not notify the region of a conflict of interest involving the firm's representation of a high profile individual in the financial industry. When discovered, the regional office recommended that a waiver be denied and the firm be removed from the LCU. The Outside Counsel Conflicts Committee voted to discontinue referring matters to this firm until the matter was resolved, but this restriction was not indicated on the LCU.¹⁹ Further, as of December 5, 1991, the Outside Counsel Conflicts Committee had not readressed whether the firm should be denied a waiver.

Legal Division policies and procedures did not address contractor enforcement sanctions for firms failing to report conflicts of interest. As a result, little incentive existed for firms to report conflicts. Further, the Legal Division did not take sufficient action against firms once the omission was discovered.

CONFLICTS INFORMATION NOT ADEQUATELY COMMUNICATED THROUGHOUT THE LEGAL DIVISION

The Outside Counsel Conflicts Committee did not provide sufficient information on conflicts to Legal Division staff responsible for retaining outside counsel. Without sufficient information on conflict disposition, the attorneys responsible for awarding legal matters to the firms could award matters to firms with existing conflicts.

The Legal Division provided information regarding conflict decisions through three formal lines of communication—a memorandum from the Outside Counsel Conflicts Committee to the regional attorney who referred the conflict to the committee, a summary or action agenda²⁰ of the committee's decisions sent to each Regional Counsel, and special indicators on the List of Counsel Utilized. However, these communication channels were used primarily to disseminate information after the Outside Counsel Conflicts Committee made a decision. No formal information channels existed to inform Legal Division attorneys in various consolidated and regional offices that a potential conflict existed and had been referred for consideration. Without this communication link, the potential for other Legal Division attorneys to continue to refer matters to firms with unresolved conflicts was high.

In addition, the action agenda did not provide sufficient information regarding conditional waivers (waivers with restrictions) placed on the firm. The action agenda only indicated whether or not a waiver was granted, but did not reveal the conditions or restrictions established by the waiver. As a result, a conditional waiver was ineffective and unenforceable because Legal Division staff responsible for hiring outside counsel were unaware of the conditions/restrictions imposed by the waiver.

¹⁹ The regional office placed a restriction on the regional LCU prohibiting future awards of matters to the firm.

²⁰ The action agenda is a listing of conflicts of interest discussed by the Outside Counsel Conflicts Committee. It is distributed to the members of the committee and serves as a summary of their meeting. The law firm name, a brief description of the conflict, and the Committee's decision is listed on the action agenda. No discussion or explanation is given for the Committee's decision.

Therefore, outside counsel with conditional/restricted waivers could receive legal matters for which a conflict existed. Further, the List of Counsel Utilized was not updated with conflict information. Firms with conflicts or restrictions were not fully identified. As a result, no firms in the LCU dated March 1991 were identified as having a conflict or as restricted. No other conflicts were identified on the LCU. The total number of firms which had unresolved conflicts or restrictions was unknown, but we were aware of 32 firms which were denied waivers and restricted in their ability to represent the Legal Division by the OCCC between November 27, 1990, and February 21, 1991. Also, firms with unresolved conflicts were not removed from the LCU. In one instance, a firm had a large number of conflicts and still appeared on the LCU without any notation of restriction.

By not adequately communicating conflicts to regional staff, the Legal Division cannot ensure that firms with conflicts were not awarded FDIC/RTC legal matters. Also, the Legal Division cannot ensure adherence to FIRREA and may be subject to claims of favoritism by outside counsel who have not received any legal matters and to public embarrassment from disclosure of firms' conflicts.

RECOMMENDATIONS

We recommend that the Senior Vice President and General Counsel:

(12) Ensure that the conflicts of interest system being developed to centrally record, report, and monitor all conflicts of interest provides detailed conflict of interest information to the regions including information on restrictions and conditions for each conflict.

(13) Require that the Outside Counsel Conflicts Committee document the rationale for its decisions for each conflict of interest.

(14) Evaluate the Outside Counsel Conflicts Committee's policies and procedures for decision-making and develop more stringent guidelines which would promote the use of firms without conflicts of interest.

CORPORATION COMMENTS AND OIG EVALUATION

A summary of the Corporation's response to each of our recommendations and our analysis follows:

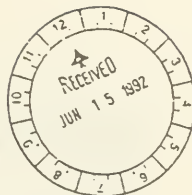
Ensure that new conflicts of interest system provides detailed information (recommendation 12): The Conflicts Tracking System (CTS) is scheduled to be implemented October 1, 1992. The system will be designed to track each conflict waiver request through all stages of resolution and provide information in the conflict and the disposition by the Outside Counsel Conflicts Committee. We will need to review the information provided by the new system to determine whether it adequately addresses our recommendation.

Require that the Outside Counsel Conflicts Committee document the rationale for its decisions for each conflict of interest (recommendation 13): The Division's response stated that it anticipated that the CTS would provide, in an abbreviated form, the rationale for each Conflicts Committee decision. The response addresses our recommendation, but we will need to review the extent of the information provided in the rationale documentation before we can, close the recommendation.

Evaluate policies and procedures to develop more stringent guidelines which would promote the use of firms without conflicts of interest (recommendation 14): The Senior Vice President and General Counsel in his response said that our concept would be a drastic change from current policy and might impact the availability of firms for use by FDIC and RTC and must be carefully considered. It is not clear from the response whether the Division intends to evaluate its policies and procedures to determine whether such a change would be beneficial to RTC.

APPENDIX

APPENDIX

CORPORATION COMMENTS

MEMORANDUM TO: Sharon E. Vander Venet
Assistant Inspector General for Audit

FROM: Gerald L. Jacobs *GLJ*
Senior Vice President and General Counsel
Division of Legal Services

DATE: June 11, 1992

SUBJECT: Response of the RTC Division of Legal Services
to the Inspector General's Audit Report

The attached report presents the response of the Division of Legal Services of the Resolution Trust Corporation to the recommendations made in the audit report entitled "Controls Over RTC's Legal Services Agreements" ("the Report"). The Report summarized the results of a nationwide audit of the RTC's controls over legal services agreements, encompassing the entire process for solicitation and retention of outside counsel.

The Inspector General's audit was performed from March 1991 to August 1991, prior to the creation of the separate RTC Legal Division and the Outside Counsel Management Section. Consequently, most of the concerns expressed by the Inspector General in the Report refer to policies and procedures which were in effect prior to the separation of the RTC and FDIC Legal Divisions. Many of the policies and procedures then in place have been reviewed and considered. Subsequent to September 1991, we have moved rapidly to

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implement new policies, procedures, and systems which will more effectively address the management and information needs of the RTC Legal Division.

We believe that the Report issued by the Inspector General on these topics is incomplete, due to the outdated information on which it is based and the Inspector General's failure to thoroughly study and understand the very significant changes and improvements made by the Legal Division since September 1991. The Report frequently cites conditions that no longer exist and does not fully discuss the changes and improvements made by the Legal Division.

We have addressed the specific concerns raised by the Report and have identified policies, procedures, and systems which have been implemented since the separation of the FDIC and RTC Legal Divisions. These initiatives, implemented subsequent to the completion of the Inspector General's audit work, address the concerns raised in the Report and are responsive to the recommendations made by the Inspector General. We would welcome the opportunity to discuss the improvements made by the Legal Division, and we invite the Inspector General to review the new policies, procedures, and systems implemented by the RTC Legal Division.

CORPORATION COMMENTSEXECUTIVE SUMMARY

The Inspector General's audit was performed from March 1991 to August 1991, with only minimal update. Most, if not all, of the concerns expressed by the Inspector General in the Report have been remedied by the Legal Division. Numerous steps have been taken to address concerns about policies, procedures, and systems utilized by the RTC Legal Division and the selection and retention of outside counsel.

We believe that the Report issued by the Inspector General on these topics is incomplete, due to the outdated information on which it is based and the Inspector General's failure to thoroughly study and understand the very significant changes and improvements made by the Legal Division since September 1991. The Report frequently cites conditions that no longer exist and does not fully discuss the changes and improvements made by the Legal Division.

Policies and Procedures Concerning Outside CounselInspector General's Concerns:

The Report expresses concern that the Legal Division does not use a competitive process to refer routine-type matters to outside counsel, that outside counsel are not being evaluated in accordance with policies and procedures, and that the Professional Liability Section ("PLS") used its contracting authority to circumvent normal RTC contracting procedures by hiring outside counsel to contract with investigators.

RTC Legal Division Response:

We are confident that the Inspector General's concerns will be alleviated by policies and procedures implemented by the Legal Division since September 1991. We have implemented policies and procedures which mandate specific engagement processes, to ensure a more competitive process for the selection of outside counsel. Additionally, Legal Services Committees have been appointed to monitor the selection and retention of outside counsel and to ensure compliance with the competitive procedures.

Under our current procedures, new law firms are evaluated and ranked before receiving any referrals. Evaluations will be updated periodically, and at a minimum, at least annually. The Outside Counsel Management Section plans to develop and implement procedures outlining specific requirements for the evaluation of outside counsel.

In accordance with the Delegations of Authority, the RTC Legal Division may retain outside counsel and approve payment of fees for services incurred in connection with legal matters, such as investigators, consultants, appraisers, or other experts. The procedures followed by PLS in allowing outside counsel to hire non-legal contractors are consistent with RTC contracting guidelines.

Management Information SystemsInspector General's Concerns:

The Report raises numerous concerns about the adequacy of the Legal Division's

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information systems, which concerns primarily refer to the information systems used prior to the separation of the RTC Legal Division.

RTC Legal Division Response:

We recognized the limitations of the previous systems, and designed, developed, and implemented the RTC Legal Information System ("RLIS") to alleviate these problems.

RLIS provides complete and reliable information about law firms, legal matters and their associated expenditures; allows us to monitor compliance with statutory requirements and internal policies; provides standardized reporting capability; and serves as a tool to be utilized in the selection process for outside counsel.

Protection Against OverpaymentsInspector General's Concerns:

The Report raises concerns about the adequacy of the review process for outside counsel invoices and the cost controls over invoices submitted by outside counsel.

RTC Legal Division Response:

RLIS is a comprehensive information system that provides us with information necessary to monitor legal matter budgets and to effectively review invoices.

All invoices from outside counsel are tracked through a single standardized system, allowing us to detect potential overpayments and unauthorized payments. In addition, RLIS invoice review procedures provide for an ongoing review of selected invoices to uncover improper charges. To ensure adherence to the invoice processing policies, we have developed an invoice review checklist.

Conflicts of InterestInspector General's Concerns:

The Report expresses the concern that conflicts of interest information is not adequately disseminated to RTC attorneys, that not all conflicts of interest are reported to the Conflicts Committee, and that the Conflicts Committee's policies for addressing conflicts are not sufficiently stringent and create the potential for criticism.

RTC Legal Division Response:

RLIS has the capability to flag law firms which have a conflict of interest and provide such information nationwide. In order to provide complete information about conflicts and decisions of the Conflicts Committee, we are developing the Conflicts Tracking System ("CTS").

The implementation of the CTS will ensure prompt reporting of all conflicts and timely

CORPORATION COMMENTS

dissemination of Conflicts Committee decisions. In addition, the Conflicts Unit recently issued procedures that strengthen the requirement for the field offices to forward conflicts to the Conflicts Committee for waiver decisions. The unit will also be implementing periodic visitations to review field office compliance with conflicts policies and procedures.

As acknowledged in the Report, all of the waiver decisions examined in the Report fell within the Conflicts Committee's policies and procedures and within statutory boundaries.

It is anticipated that CTS will provide, in some abbreviated form, the rationale for each decision of the Conflicts Committee to provide guidance to RTC attorneys.

We have addressed the specific concerns raised by the Report and have identified policies, procedures, and systems which have been implemented by the RTC Legal Division. These initiatives, implemented subsequent to the completion of the Inspector General's audit work, address the concerns raised in the Report and are responsive to the recommendations made by the Inspector General.

APPENDIX

APPENDIX

CORPORATION COMMENTS

OUTLINE

- I. INTRODUCTION
- II. BACKGROUND
- III. SUMMARY OF RTC INITIATIVES
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 - Management Information Systems
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- IV. POLICIES AND PROCEDURES CONCERNING OUTSIDE COUNSEL
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 - Communication of Conflicts Information
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CORPORATION COMMENTSRESPONSE OF THE RTC DIVISION OF LEGAL SERVICES
TO THE INSPECTOR GENERAL'S AUDIT REPORT

This report presents the response of the Division of Legal Services of the Resolution Trust Corporation ("RTC") to the recommendations made in the audit report prepared by the RTC Office of Inspector General, entitled "Controls Over RTC's Legal Services Agreements" ("the Report"). The Report summarized the results of a nationwide audit of the RTC's controls over legal services agreements, encompassing the entire process for solicitation and retention of outside counsel.

The stated objectives of the audit were to determine whether (1) the RTC's use of legal services contractors was in accordance with policy and guidance; (2) legal services agreements were being used to circumvent normal contracting procedures; and (3) the RTC was effectively and efficiently administering legal services agreements. The Office of Inspector General performed audit work in Washington, each of the RTC's regional offices, and selected consolidated offices.

I.
INTRODUCTION

The Federal Home Loan Bank Act ("FHLBA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), established the Resolution Trust Corporation ("RTC") to help resolve the savings and loan industry crisis. The FHLBA provided that the Federal Deposit Insurance Corporation ("FDIC") would serve as exclusive manager of the RTC and that the RTC would use employees of the FDIC. Therefore, the FDIC Legal Division provided legal support and services to the RTC through its RTC Branch. On September 10, 1991, the FDIC Board of Directors approved the creation of a separate RTC Division of Legal Services ("RTC Legal Division"), and appointed Gerald L. Jacobs as General Counsel to head the Division effective September 22, 1991. The relevant provisions of the Resolution Trust Corporation Refinancing, Restructuring and Improvement Act of 1991, which became effective on February 1, 1992, removed the FDIC as the RTC's exclusive manager and empowered a Chief Executive Officer to manage the RTC, thus, further separating the two entities.

The current RTC Legal Division provides comprehensive legal services to the RTC and represents the RTC in its corporate, conservatorship, and receivership capacities. The RTC Legal Division uses outside counsel to provide advice and legal support to the RTC. Outside counsel and the RTC Legal Division are engaged in a cooperative effort to provide their client, the RTC, with efficient and cost-effective legal services.

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The Inspector General's audit was performed from March 1991 to August 1991, prior to the creation of the separate RTC Legal Division and the Outside Counsel Management Section. Although the Inspector General gathered additional information in March and April of 1992 on initiatives taken since the conclusion of the field work, after being requested to do so by the Legal Division following review of a draft of the Report, the majority of the field work for the audit was performed prior to the separation of the RTC and FDIC Legal Divisions. Consequently, most of the concerns expressed by the Inspector General in the Report refer to policies and procedures that were in effect prior to the separation of the two Legal Divisions. Such concerns do not adequately reflect significant changes and improvements to the RTC Legal Division's practices and procedures which were put in place during the period between September 1991 and the final date of the Report.

Since the creation of the RTC Legal Division, we have taken numerous steps to address concerns about policies, procedures, and systems utilized by the RTC Legal Division and the selection and retention of outside counsel. We recognized that not all of the policies and procedures in place at the time of the separation were well adapted to the nature and volume of RTC operations. Therefore, we have moved rapidly to implement new policies, procedures, and systems which will more effectively address the management and information needs of the RTC Legal Division.

Although we appreciate the efforts of the Inspector General to evaluate the policies, procedures, and systems of the Legal Division and value the observations and recommendations made by the Inspector General, we want to ensure that the extensive efforts already made by the Legal Division to deal with the issues addressed in the Report are recognized. It should be pointed out that the RTC did, on its own initiative, implement policies, procedures, and systems subsequent to the separation from the FDIC Legal Division, and subsequent to the completion of the audit work, which addressed the concerns raised in the Report and which are consistent with the recommendations made by the Inspector General. While the Report is outdated in many respects, it nevertheless provides confirmation that the concerns addressed by the Legal Division were exactly the concerns that needed to be addressed, and it also provides an opportunity to review the initiatives we have undertaken already. Thus, the Report is a valuable tool for measuring the progress made by the RTC Legal Division since its inception in September 1991.

APPENDIX

APPENDIX

CORPORATION COMMENTSII.
BACKGROUND

In September 1990, approximately one year after the RTC was established, the FDIC legal staff dedicated to the RTC consisted of 299 attorneys, 12 of whom were located in the Washington headquarters, with the remainder in the regional and consolidated offices. By the beginning of September 1990, the RTC had been given control of 243 institutions in conservatorship with gross assets of \$118.7 billion, and hundreds of institutions to be resolved. The RTC was forced to operate and organize at the same time. The Legal Division simultaneously had to provide all required legal services to support the client's extensive activities, acquire and train staff, computerize, and put in place all desired policies and procedures.

In order to keep pace with the rapidly increasing volume of work, the legal staff was expanded. By September 1991, at the time of the separation of the FDIC and RTC Legal Divisions, the RTC used 1,289 legal staff, of which 576 were attorneys. As of March 31, 1992, the RTC Legal Division consisted of 1,563 legal staff, of which 680 are attorneys.

In 1990, the RTC Legal Division utilized 937 outside law firms for RTC matters. In 1991, the number of firms utilized by the RTC Legal Division more than doubled to 1,986.

As of May 1, 1992, the List of Outside Counsel maintained in the RTC Legal Information System ("RLIS") contained a total of 3,991 "performing" and "inherited" law firms. Of those firms, 2,333 are "performing," meaning that they have executed Legal Service Agreements with the RTC, and 1,658 are "inherited," meaning that the firm provided services to the institution at the time it went into conservatorship and continues to perform services for that institution.¹

The most legally intensive matters, and matters, therefore, which require significant use of outside counsel, are in the professional liability area. As of May 8, 1992, 194 lawsuits were pending against directors and officers, attorneys, accountants, and other professionals for their roles in the failure of savings and loan institutions. In addition, as of March 31, 1992, 670 professional liability claim investigations were ongoing, and the Professional Liability Section had made 816 criminal referrals to the Department of Justice.

¹ Although outside counsel listed on RLIS are available for use by the RTC, they may not currently be active. By February 29, 1992, the RTC Legal Division already had utilized 1,341 law firms, both performing and inherited, in 1992.

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The utilization of outside counsel under the direction of RTC in-house legal staff has been very effective in professional liability matters. In 1991, cash recoveries and agreed to settlements in professional liability cases totalled \$104.6 million. The fees and expenses paid to outside counsel in professional liability cases in 1991 totalled \$25.8 million, or approximately 25% of the recoveries and agreed to settlements. Through March of 1992, cash recoveries in professional liability cases already totalled nearly \$27.3 million. Fees and expenses through the first quarter of 1992 were \$5.4 million, or approximately 20% of the recoveries.

III.

SUMMARY OF RTC INITIATIVES

During the period of the audit performed by the Inspector General, the RTC Legal Division was one of five branches of the FDIC Legal Division and, as such, followed FDIC policies and procedures. Since September 1991, we have adopted and implemented new policies, procedures, and systems in a number of areas.

Selection and Retention of Outside Counsel

Due to the extensive utilization of outside counsel by the RTC Legal Division, the selection and retention of outside counsel is an important process which must be monitored and controlled through established policies and procedures. The selection and retention process encompasses the period from identifying potential outside counsel through completion of legal matters. Recently, we established a section within the Legal Division to oversee utilization of outside counsel and implemented several new policies and procedures for the selection and retention of outside counsel.

We created the Outside Counsel Management Section ("OCMS") as part of the RTC Legal Division to provide internal controls and guidance on matters concerning outside counsel. OCMS consists of several working groups which are designed to coordinate and oversee the use of outside counsel by the RTC Legal Division, including a Policies and Procedures Unit, a Conflicts Unit, and a Minority and Women Outreach Unit.

Specifically, the Policies and Procedures Unit is responsible for drafting, implementing, and overseeing the implementation of general policies and procedures relating to the management of outside counsel. Upon its creation, the Policies and Procedures Unit took numerous steps to address concerns about the procedures for the selection and retention of outside counsel, including preparation of the RTC Guide for Outside Counsel ("RTC Guide").

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The RTC Guide sets forth the basic policies and procedures for the management of outside counsel, as well as application procedures.

In addition, we have adopted and implemented the Policies and Procedures for the Engagement of Outside Counsel and the Statement of Policy and Procedures Concerning Limitations Upon the Use of Outside Counsel, which limits generally the use of any particular outside counsel.

We also recently created a Conflicts Unit within the Outside Counsel Management Section, which is devoted to supporting the work of the joint FDIC/RTC Outside Counsel Conflicts Committee ("Conflicts Committee"). The Conflicts Unit is responsible for the development, implementation, and oversight of policies and procedures pertaining to all aspects of outside counsel conflicts of interest and ethics matters.

Management Information Systems

The management information system used by the FDIC/RTC Legal Division to provide basic data on legal matters was the Case Management System ("CMS"). CMS was completely separate and independent of the payment system, and the quality of the data in the CMS database was discovered over time to be inconsistent. Additionally, the database which maintained the List of Counsel Utilized ("LCU") did not provide sufficient information about outside counsel to be used as a selection tool.

As noted in the Report, we recognized the weaknesses and limitations of the CMS and LCU, and we determined that those systems were not adequate to provide the level of information management required by the RTC. We developed the RTC Legal Information System ("RLIS") to enhance our control over legal information and payments. RLIS is designed to alleviate the problems associated with previous information systems and to address our growing information needs.

RLIS is an information storage and retrieval database which enables us to track and control legal matters and their associated expenditures and gives us the ability to monitor and report on management concerns. Information on law firms, referrals, women and minority participation, significant issues, and specific legal matters is collected in RLIS and is available to RTC staff in Washington and in the field offices.

RLIS is a budget-based system which has invoice processing procedures that require each outside counsel to submit a legal matter budget for each matter it handles. Because all legal referrals are on RLIS, this system allows us to monitor costs as they are incurred and to evaluate on an on-going basis the direction of the legal matter.

CORPORATION COMMENTSPayment of Outside Counsel

The Report identifies two different outside counsel payment programs that were used by the FDIC/RTC Legal Division in 1990: the Payment Authorization Voucher Program ("PAV") and the Accelerated Payment Program ("APP"). Under the APP, payments were made to outside counsel prior to review of the invoices submitted by outside counsel, resulting in some overpayments. Recognizing the problems associated with these payment programs, we discontinued the use of both programs and developed RLIS, which now provides the basis for the payment program for outside counsel.

IV.

POLICIES AND PROCEDURES CONCERNING OUTSIDE COUNSEL

The Report raises several concerns about our compliance with policies and procedures relating to the selection and retention of outside counsel, which the Report alleges has resulted in a lack of fair and open competition and a failure to realize potential savings. The Report expresses concern that the Legal Division does not use a competitive process to refer routine-type matters to outside counsel. The Report recommends that we establish internal controls to ensure compliance with procedures on competitive retention of outside counsel.

The Report also expresses concern that because outside counsel are not being evaluated in accordance with policies and procedures, we do not ensure that the best qualified legal firms are being utilized. The Report recommends that we develop procedures to clearly define when evaluations of outside counsel are to be prepared.

Finally, the Report addresses the RTC Legal Division's procedure for hiring non-legal contractors. Specifically, the Report states that the Professional Liability Section ("PLS") used its contracting authority to circumvent normal RTC contracting procedures by hiring outside counsel to contract with non-legal contractors for non-legal services. The Report recommends that we discontinue the practice of using outside counsel to hire non-legal contractors.

We are confident that the Inspector General's concerns will be alleviated by the policies and procedures implemented since September 1991 and that the Inspector General will support our efforts. The following sets forth our current practices and procedures.

The new RTC Guide sets forth the application procedures for outside counsel. Each outside counsel must complete and submit a

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registration form that provides background information on the firm, including a statement of the firm's qualifications, fitness, and integrity. The law firm also must provide an exhaustive narrative statement about itself, highlighting areas of expertise or specialization and providing specific information about the members of the firm who have that expertise. For each attorney or paraprofessional offered, the firm must provide rate information, including both its usual rate and the proposed discount rate.

Evaluation of prospective outside counsel begins with a review of the law firm's proposal to determine if it is within the competitive range for legal services, either by specialty or geographical area. Special emphasis, analogous to the contracting department's awarding of bonus technical points, is placed on the fulfillment of the RTC's commitment to Equal Opportunity and the RTC Legal Division's Minority and Woman Outreach Program.

After interviewing the firm, RTC attorneys will recommend whether the firm should be retained. The recommendation is considered by the Assistant General Counsel or Regional Counsel who has the authority to enter into an RTC Legal Services Agreement ("LSA").

A law firm is retained by the execution of an LSA with the RTC. This agreement binds a firm to provide the RTC legal services at the rate structure agreed upon for a period of two years. However, no obligation exists on the part of the RTC to utilize the services of the firm. The LSA incorporates Legal Division policies and procedures with which outside counsel are expected to comply. Upon execution of the LSA, the law firm is entered into RLIS and is able to receive RTC work.

Competitive Bidding for Routine Matters

All referrals to outside counsel are based upon the competitive application process in which law firms are rated, reviewed, and evaluated for cost-effectiveness. The performance of a technical and cost evaluation of a law firm is a competitive bidding procedure in all respects; however, there is no single proposal due date for all law firms. Rather, proposals are received and evaluated on a continuing basis. Also, the Legal Division's practice of negotiating with outside counsel to obtain services at discounted rates (in comparison to its standard rates) accomplishes the same goal of realizing savings that results from direct competitive bidding.

In addition, we have always encouraged outside counsel to offer competitive flat fees for routine legal matters. Each law firm in its application indicates what types of routine matters it is prepared to handle on a flat fee basis. These matters include deeds in lieu (per property), loan restructurings, foreclosures,

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bankruptcy, lift stays, proofs of claims, forcible entry and detainer actions, and ad valorem tax suits.

However, we also have developed and implemented policies and procedures to ensure a competitive process for the selection of outside counsel that is more closely analogous to the RTC's non-legal contracting procedures. Through the implementation of new engagement procedures, we are endeavoring to use a more competitive bidding process for the selection of outside counsel.

The Policies and Procedures for the Engagement of Outside Counsel ("Engagement Procedures") mandate specific bidding processes for the engagement of outside counsel as to types of legal services which are appropriate for this type of selection. The Engagement Procedures outline three methods for the engagement of outside counsel. The particular needs of the Legal Division will dictate the method chosen.

The first method, Standard Selection, involves the competitive selection and engagement of outside counsel to provide legal services in connection with a complex or extensive matter or a number of specific matters. The second method is the use of a Basic Ordering Agreement ("BOA"), by which one or more outside counsel are competitively retained to perform legal services in connection with large numbers of similar matters involving substantially similar types of services. The final method, Specific Engagement, involves a process by which a single outside counsel is solicited and retained to perform legal services in connection with a specific matter or matters.

Pursuant to the engagement procedures, Legal Services Committees have been appointed in each field office, as well as at headquarters in Washington, to determine the need for outside counsel and the extent to which engagements of outside counsel can be competitively bid. The Legal Services Committees will serve as an oversight mechanism to monitor the selection and retention of outside counsel and to ensure compliance with the competitive procedures. In addition, the Policies and Procedures Unit, through its visitation program and weekly telephone conferences with the Legal Services Coordinators, stays abreast of the latest developments in the field to identify problems that arise and ensure they are properly addressed.

Currently, we are reviewing our policies and procedures for competitive bidding in the engagement of outside counsel to consider streamlining such policies and procedures in light of the recent major revisions of the general RTC contracting procedures.

CORPORATION COMMENTSEvaluation of Outside Counsel's Performance

Under our current procedures, new law firms are evaluated and ranked before receiving any referrals. We expect that these evaluations will be updated periodically, and at a minimum, annually. We also plan to have our field offices report on the evaluations they have done so that we can monitor these evaluations. The Outside Counsel Management Section plans to develop and implement procedures outlining specific requirements for the evaluation of outside counsel.

In addition, the Professional Liability Section ("PLS"), which handles some of the most complex and challenging RTC cases, maintains a database of evaluations of outside counsel, which is reviewed prior to assigning additional cases. These evaluations are available to other Legal Division attorneys as well. Outside counsel handling PLS cases are reviewed periodically, and at least annually.

Finally, evaluations are performed on an informal basis. RTC attorneys' experiences with outside counsel's responsiveness, knowledge of substantive legal issues, and costs are shared with other members of the legal staff. Unsatisfactory performance is frequently dealt with informally by counseling of the firm and its attorneys, diminution or halt in referrals, increased scrutiny of fee bills, or even transfer of the work to another firm.

Legal Division Contracting Authority

The Report raises specific concerns about the failure of PLS to comply with RTC contracting procedures by allowing outside counsel to hire non-legal contractors. The Report charges that the RTC procedures for hiring outside contractors and the RTC qualifications for outside contractors are not followed. The Inspector General raises the concern that not all qualified contractors are considered and that potential offerors are not given fair and consistent treatment. Finally, the Report charges that extra costs are added by the additional layer of management created when outside counsel hire non-legal contractors and that this procedure also introduces a conflict of interest for outside counsel.

In accordance with the Delegations of Authority, the RTC Legal Division may retain outside counsel and approve payment of fees for services incurred in connection with legal matters, such as investigators, consultants, appraisers, or other experts. The Legal Division is not legally obligated to follow RTC contracting guidelines in contracting for such services.

PLS utilizes investigators, both in-house and outside, to investigate potential claims against former officers and directors,

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attorneys, accountants, and other professionals of failed institutions for their roles in the failure of savings and loan institutions. PLS follows the FDIC practice of relying initially on in-house investigators, where possible, and then, when use of outside investigators is necessary, hiring such investigators through outside counsel.

It is imperative that the process of contracting for legal and non-legal services be conducted in a manner that will protect the confidentiality of attorney-client communications. We must balance issues of contracting on the one hand with the possibility of adversely affecting the RTC's legal rights and the preservation of statutory privileges on the other.

Having investigators work directly for outside counsel is the common relationship in private litigation, because the work done by an investigator will be protected by the work-product privilege if it is done under the direction of an attorney. Whenever investigators do not work directly for lawyers, it erodes our ability to assert that the investigation was conducted at the direction of an attorney and that, therefore, the work-product of the investigator should be protected as the work-product of the attorney. We must protect the work-product of investigators, because the release of information discovered by investigators could compromise potential litigation.

The need for outside investigators was and is very real. The RTC had no investigative staff in some locations until a year and one half after the first institutions were closed and the time period for filing claims was, in some cases, half gone. RTC in-house investigators also did not, initially, have the depth of experience possessed by FDIC investigators.

Given such time constraints, Investigations and PLS began hiring new in-house investigators and attorneys, respectively. Still, faced with an ever-increasing caseload and impending filing deadlines, it was necessary to hire additional outside investigators with more training and expertise to assist in investigating potential claims fully prior to the expiration of the statute of limitations.

Investigations sought direct contracting authority to hire outside investigators. However, such authority was not initially forthcoming. Until fairly recently then, only two options existed for obtaining access to outside resources: Investigations could seek authority from the RTC Board to hire each outside contractor, or outside counsel could hire them. PLS and Investigations concluded that the most effective way to get potential claims fully investigated prior to the expiration of the limitations period was through outside counsel's hiring of trained investigators. We made the conscious decision that hiring investigators through outside counsel was preferable to failing to discover and bring valid

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lawsuits against the directors, officers, and other professionals who had a large hand in bringing about the failure of the savings and loans throughout the country. The magnitude of the RTC caseload continues to prevent us from relying solely on in-house resources or expertise to investigate all possible causes of action against former directors and officers and other professionals of failed thrifts.

In addition, although the Legal Division is not obligated to follow RTC contracting guidelines, the procedures followed by PLS in allowing outside counsel to hire non-legal contractors are consistent with RTC contracting guidelines. Although a law firm might recommend a particular outside investigator who had a good track record with the firm, the final selection of outside investigators is made by in-house staff. No unfair advantage is given to non-legal contractors who previously have worked with the firm.

In-house attorneys and investigators have final approval of the process and, as in hiring the outside counsel, in-house contractor lists and recommendations are reviewed. Moreover, several potential contractors are evaluated for each potential contract. Non-legal contractors who have completed the requirements to contract with the RTC are given adequate consideration. RTC staff takes care to choose investigative firms that have been qualified under the RTC contractor standards. PLS hires investigators in much the same way it chooses outside counsel: after careful review of possible servicers and discussions with those people about their capabilities and prices.

In general, we have also found that it is more cost-effective and efficient to allow outside counsel to retain non-legal contractors, such as court reporters, messengers, copy services, investigators and other services associated with the conduct of litigation, without a formal solicitation and bid process which is more time-consuming and costly. Outside counsel nonetheless are directed to perform competitive analyses of non-legal contractors prior to hiring in an effort to obtain the most cost-effective and experienced service. Indeed, contrary to the Report's charge that "PLS used its contracting authority to circumvent normal RTC contracting procedures," the PLS procedures for hiring outside contractors through outside counsel met the RTC contracting goals of fairly considering and evaluating more than one offeror of services for non-legal services contracts.

If a conflict of interest exists for outside counsel between representing the RTC and directing investigators who may find litigation that the outside counsel will then be paid to handle, such conflict is the same that exists for any attorney when he is asked to advise a client as to whether that client has a viable cause of action. The incentive provided by the possibility that the counsel would be retained to pursue the claim is fully

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compatible with the obligation of every attorney to be zealous in the pursuit of his client's interests. In fact, PLS recognizes and relies on the incentives inherent in having outside counsel assist in evaluating potential causes of action to gain comfort that all possible causes of action are fully explored.

Also, the process of pursuing PLS claims does not entail having outside counsel or PLS perform the investigation. Using outside investigators that outside counsel retains at the RTC's request, Investigations performs the actual investigations. Outside counsel, on the other hand, are often hired to help in-house counsel determine whether, in light of the facts, the RTC has a valid claim, regardless of whether there are outside investigators. Outside counsel's role is one of giving legal advice and making recommendations on questions ranging from state law procedure to fiduciary relationships between directors and professionals working for the thrift. The bottom line remains, however, that in-house counsel has always been responsible for making an independent recommendation, based on the facts and the law, as to the viability of a claim, before the RTC will file suit.

The guidance and direction provided to outside investigators by outside counsel does not duplicate the management performed by in-house investigators. Through supervising outside investigators, in-house investigators are able to perform their responsibility of gathering facts which support professional liability claims. PLS attorneys, assisted by outside counsel, provide overall guidance on the direction of the investigation and litigation. This approach reflects a careful balancing of the need to have counsel provide direction and guidance of PLS investigations against the desire to maintain direct supervision of the performance of outside contractors by in-house investigators.

V.

MANAGEMENT INFORMATION SYSTEMS

The Report raises numerous concerns about the Legal Division's information systems. Specifically, the Report charges that the information systems did not capture important information or produce reports needed to manage our operations adequately in accordance with policies, procedures, and statutory requirements. The Report states that the systems were not designed to handle the increased workload of the RTC or to report information on FIRREA requirements, such as the usage of minority- and women-owned law firms. The Report also expresses concern that conflict of interest information was not systematically compiled and made available to attorneys selecting outside counsel. The Report raises concerns that steps to improve the information systems were not made timely and efficiently and that future needs may not be adequately

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addressed. The Report recommends that we assess immediate and long-term information needs to develop goals for the information system and that we develop strategic plans for achieving these goals.

The concerns raised in the Report primarily refer to the information systems used by the FDIC/RTC Legal Division. We recognized the limitations of the previous systems and designed, developed, and implemented the RTC Legal Information System ("RLIS") to alleviate these problems. We began implementation of RLIS in October of 1991.

Information Storage and Retrieval

First, the Report raises several specific concerns about the accessibility and reliability of information maintained in the information systems. The Report indicates that the information systems were not capable of providing sufficient information about outside counsel to be used as a selection tool. For example, the systems did not provide information on when matters were referred; the extent of minority and women participation; outside counsel's expertise, hourly rates, and conflicts of interest; or whether outside counsel was inherited. The Report indicates that complete information regarding compliance with statutory requirements and internal policies was not available. Also, the Report charges that no centralized system existed to capture and track nationwide financial data. The Report recommends that we develop standardized reporting capability so that we have readily accessible information to monitor outside counsel.

Prior to review of a draft of the Report, the RTC Legal Division recognized the same concerns as noted by the Inspector General in the Report, and we took immediate and appropriate action to improve our systems. As discussed more fully below, RLIS provides complete and reliable information about law firms and legal matters, allows us to monitor compliance with statutory requirements and internal policies, and gives us standardized reporting capability.

Law Firm Information. RLIS contains reliable and accessible information about law firms, because it requires such information to be completed during the application process. Before a law firm may be utilized by the RTC for the assignment of new legal matters, the firm must be listed on the RLIS database. Information required for each firm includes whether the firm is minority- or women-owned, the extent of minority and women participation in the firm, conflicts of interest which may exist, the addresses of each office and the areas in which each office is willing to do business, and, after execution of an LSA, the firm's rate schedule.

RLIS has the capability to categorize law firms as performing,

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inherited, conflicted, restricted or terminated. Outside counsel who have executed a Legal Services Agreement with the RTC are identified on the RLIS database as "performing firms." Once a law firm has executed an LSA, it is entered on RLIS and becomes available for use as outside counsel.

Outside counsel who were utilized by a savings and loan institution prior to intervention and continue to be utilized by the institution in conservatorship are "inherited firms." Inherited firms are allowed to complete matters they are working on, but RLIS will not allow new matters to be assigned to such firms unless they execute an LSA. If an inherited firm does not execute an LSA within 90 days of intervention, then any matter on which the firm is working is subject to transfer to another firm.

RLIS also has the capability to identify firms as conflicted, terminated, or restricted. Conflicted firms are those which have a conflict of interest which has not been resolved or waived. Restricted firms are firms which have reached the limit on legal fees which may be paid to a law firm during any 12 month period. New matters may not be assigned to any firm listed as conflicted, terminated, or restricted.

Legal Matter Information. RLIS also stores and tracks information about specific legal matters. Detailed information concerning the matter, the institution involved, and the type of work to be performed must be entered in the RLIS database before a law firm may be utilized by the RTC Legal Division on a particular matter.

Also, before outside counsel is allowed to perform legal services on a matter, they are required to prepare a budget for the matter. Upon approval by the appropriate authority, as determined in accordance with the Delegations of Authority, the budget for the matter is entered into RLIS.

In addition, detailed information on all RTC legal matters handled by outside counsel and their associated expenditures, including minority and women participation in the matter, must be entered into RLIS as part of the invoice processing procedures. If outside counsel does not provide this information when submitting an invoice, the invoice is returned for completion before it will be paid. As indicated in the Report, this procedure of requiring information collection prior to payment should ensure maintenance of complete information in the system.

Financial Information. RLIS provides nationwide access to financial information about specific legal matters, individual law firms, and the expenditures associated with either matters or firms. Each matter is assigned a unique Legal Division Identification Number ("LDID"), which allows us to track the invoices received and payments made on specific matters and allows

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us to ensure that all payments have been approved. All invoices from outside counsel are tracked through a single standardized system, allowing us to detect potential overpayments and unauthorized payments.

In contrast to previous information systems, financial information on legal bills paid by conservatorships and SAMDA's is maintained in RLIS despite the fact that the bills are paid directly by the conservatorship or SAMDA contractor. All invoices submitted by outside counsel, including those employed by conservatorships and SAMDA's, must be recorded in RLIS.

Accessibility and Reporting of Information. All of the information collected in RLIS is available to RTC staff in Washington and in the field offices. RLIS was designed to allow access to law firm and legal matter information to all RTC attorneys and to allow attorneys to browse through the information maintained in the system. This easy access to a broad spectrum of information allows RLIS to be utilized in the selection process for outside counsel.

Additionally, we are able to generate numerous reports which allow us to monitor not only specific legal matters and utilization of outside counsel, but also specific issues of management concern. With RLIS, we are able to determine the number of matters referred to minority- and women-owned firms and provide information regarding minority and women participation in matters to ensure compliance with the statutory requirement to utilize minority- and women-owned businesses to the maximum extent. We are also able to track financial information relating to individual firms in order to ensure compliance with the limit on legal fees outside counsel may receive in any 12 month period.

Virtually all data collected in the RLIS database is retrievable in report format. Specific reports which can be generated in all offices by any person trained in using RLIS include: (1) law firm detail reports, which are capable of listing all firms, all firms in a specific location, performing firms, inherited firms, and other combinations of the types of firms included in RLIS; (2) law firm profiles, which provide detailed information about an individual firm; (3) legal matter profiles, which provide information about specific matters; (4) attorney workload reports, which list the number and status of cases that one attorney, one office or one firm is working on; (5) contractors reports, which list the legal matters assigned to SAMDA's; (6) early warning reports, which identify system functions, such as listing all matters which are missing budgets; and (7) legal matter type reports, which list all legal matters in a particular category, such as professional liability. These standard reports can be generated by any RTC attorney in any office. Currently, many additional standard reports are being developed.

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In addition to these standard reports, it is also possible to generate ad hoc reports from RLIS. These ad hoc reports allow us to accommodate quickly requests for information which is contained in RLIS, but which is not produced already on one of the standard reports. For example, an ad hoc report could be produced identifying all matters which have budgets exceeding \$100,000. Although the length of time needed to generate such a report necessarily depends on the type and volume of information requested, judging from the requests we have had so far, most ad hoc reports can be produced in a time period ranging from a few hours to a day and one half.

Conflict of Interest Information

Information identifying outside counsel who have an actual or potential conflict of interest is contained in RLIS and available to all Legal Division attorneys. Conflicts of interest information reported from outside counsel is entered into RLIS by the office where the conflict is reported. RLIS contains a process which will flag a firm as having an actual or potential conflict of interest as soon as such conflict is reported. The flag will remain until the conflict of interest is either resolved or waived by the Conflicts Committee. This allows attorneys to determine if a conflict of interest exists as part of the selection process for outside counsel.

In addition to identifying firms which have a conflict of interest, RLIS also may provide limited information about restrictions on specific firms. If RLIS has flagged a firm as having a conflict of interest, the conflicts comments section of RLIS provides an opportunity to describe whether the firm has a limited restriction or whether the firm is barred completely from new matters.

Meeting Future Information Needs

The RLIS Steering Committee, together with the RLIS staff in Washington, oversees the operations of RLIS, establishes the policies and procedures for working within the system, and evaluates the operations of the system to plan for future enhancements and adjustments. On February 28, 1992, we issued the RLIS Office Procedures Manual for RTC Legal Matters, which establishes policies and procedures for the use and operation of RLIS.

Additionally, each field office has an RLIS Coordinator, who is assisted by a staff of RLIS Legal Technicians. The RLIS Coordinators oversee compliance with RLIS procedures in the field offices.

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The RLIS Steering Committee, together with the staff in Washington, continually reviews the progress of the RLIS database and the developing information needs of the Legal Division. Throughout the process of implementing RLIS, we have determined that certain adjustments to the system are necessary. Several phases of adjustments have been implemented already, with the next phase scheduled for early this Fall. Some of the changes which have been made and which are scheduled to be made in the future include adding fields for additional information that we have determined to be important and making additional fields mandatory. For example, we plan to include information about each firm's expertise in a future enhancement of RLIS.

In addition, at the present time, Legal Division staff are working along with the RLIS contractor to design and develop future reports. For example, if we determine that requests for specific ad hoc reports are made repeatedly, such ad hoc reports will be added to the list of standard reports.

VI.

PROTECTION AGAINST OVERPAYMENTS

The Report raises concerns about the review process for outside counsel invoices and the programs used to pay these invoices. The Report charges that the invoice review process is not adequate to verify correctness and to identify inappropriate charges. The Report recommends that we revise the invoice processing procedures to include a comprehensive list of inappropriate charges and to ensure that staffing amendments or rate changes are approved by the appropriate authority. The Report also recommends that we enhance and standardize training on the review process to include reviewing invoices for accuracy, identifying prohibited charges, and determining the reasonableness of case budgets. The Report indicates that we do not have, and recommends that we establish, an adequate oversight mechanism to ensure that the review process is adequately performed. The Report also charges that adequate cost controls are not in place to manage and contain expenses for matters referred to outside counsel.

The Report criticizes the use of the Accelerated Payment Program ("APP"), which resulted in some overpayments. The Report also identifies weaknesses in the bill paying process performed by the FDIC's Division of Accounting and Corporate Services ("DACS") which resulted in some overpayments, including the lack of a control mechanism to identify payments for identical invoice numbers, the lack of verification of approval for payments, the failure to require law firms to provide a unique invoice number, and the lack of a single standardized system to track invoices.

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Many of the concerns raised in the Report address the APP and the bill paying process used by DACS, both of which are no longer used by the RTC Legal Division. We recognized the problems created by the APP and the bill paying process and have taken steps to ensure that the new payment system developed in RLIS and the invoice review process correct such problems.

Invoice Review Process and Cost Controls

RLIS is a comprehensive information storage and retrieval system that provides us with information necessary to monitor legal matter budgets and to effectively review invoices. Because RLIS is a budget-based system, we are able to establish the projected cost of a matter and track invoices and payments to ensure that overpayments and unauthorized payments are avoided. Also, RLIS gives us control over the cost-effectiveness of a proposed legal action from its onset and allows us to make a management decision on the best course of action to pursue based upon an accurate cost projection.

Budgets. RLIS invoice processing procedures require every outside counsel to submit a legal matter budget for each matter it handles. After review by the supervising attorney, the budget must be approved and signed by the appropriate RTC attorney. Authority to approve legal matter budgets and changes in budgets is determined in accordance with the Delegations of Authority. The legal matter budget must be entered into RLIS before any payment to the firm is made.

Throughout the duration of the matter, payment amounts are tracked against budget amounts, and any invoice that is submitted without a budget or is over budget will not be paid. If the accumulated invoices for a matter exceed the budget, a new budget must be submitted by outside counsel and approved by the appropriate authority, before additional payment can be made.

Legal matter budgets are broken down into phases that have estimated costs and completion times, estimated recovery and judgment amounts, and success probabilities. Progress can be monitored against the approved plan and budget. At the completion of each budget phase, a performance history can be generated to determine how well law firms manage matters. With RLIS, we can monitor firms for their ability to handle a matter and work within a reasonable budget.

Early warning reports can be run to alert us to potential problems with legal matter budgets. One such report lists matters whose cumulative invoice payments are nearing their budget limits.

Invoices. RLIS provides a single, standardized tracking system for every invoice submitted by outside counsel. RLIS

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assigns a unique Legal Division Identification Number (LDID) to each legal matter. Every invoice submitted for a particular matter will be identified by that LDID. Therefore, the invoice record can be called up at any time to check on the status of an invoice.

In addition, in order to be paid, all invoices submitted under RLIS must contain a unique invoice number assigned to the invoice by the outside counsel. This prevents duplicate payments for services. RLIS has a built-in control that prevents invoices with duplicate invoice numbers or overlapping service dates from being paid.

Invoice Review Process. RLIS invoice review procedures provide for an ongoing review of selected invoices by technicians, paralegals, and supervising attorneys to uncover improper charges. If invoice discrepancies are discovered, the supervising attorney resolves them with the firm prior to payment of the invoice.

RLIS facilitates effective review because so much information is maintained on RLIS and made accessible nationwide. For example, the rates listed on an individual invoice may be compared easily to the rates identified on the Legal Services Agreement, because LSA rates are stored in the database. RLIS does not allow new matters to be assigned to any firm which does not have a current LSA.

The first step of the invoice review process is the review by RLIS legal technicians. All invoices are reviewed by legal technicians for proper submission criteria prior to the data being entered in RLIS. RLIS legal technicians are trained in each office to review invoices for discrepancies.

In addition to the initial review by legal technicians, we have adopted procedures for detailed review of specific invoices. All invoices over \$5,000 or overbudget are reviewed in detail by the supervising attorney. Additionally, RLIS is designed to electronically and randomly select every fiftieth invoice for detailed review.

Internal flags can also be set in RLIS to force a detailed review of all invoices for a specific matter or all invoices for a specific firm. This procedure requires the supervising attorney to review and approve the invoice before the firm can be paid.

A detailed review compares the fees charged on the invoice with the fee schedule of the LSA and ensures that every attorney identified as working on the matter is listed on the LSA. An invoice charging rates different from those listed on the LSA or listing attorneys not identified on the LSA will not be paid unless approved by the appropriate authority.

Invoices are also reviewed to ensure that inappropriate charges are not reimbursed. The RTC Guide for Outside Counsel

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identifies inappropriate charges which will not be reimbursed by the RTC, such as secretarial overtime, describes limitations on certain charges, such as photocopying charges, and lists restrictions on reimbursement for travel time. Inappropriate charges included on an invoice will not be paid.

To ensure adherence to the invoice processing policies, we have developed an invoice review checklist for use by legal technicians and attorneys. Whenever an invoice is subject to a detailed review, the invoice review checklist is completed, indicating the reason for the detailed review and the specific items which were reviewed. This detailed review checklist requires a review of and lists specific items, including travel expenses, meal expenses, parking expenses, word processing charges, and duplicating expenses, which may include inappropriate charges.

All legal staff who review invoices are trained, or are in the process of being trained, to identify prohibited charges and to verify accuracy. The RLIS legal technicians are trained in invoice review procedures in their respective offices. We are also in the process of training Legal Division attorneys in invoice review procedures. The attorney training, which was recently begun in Washington, will continue into the summer. The attorney training will include instruction on the reasonableness of budgets.

Accelerated Payment Program

The Accelerated Payment Program ("APP"), a payment program utilized by the FDIC/RTC Legal Division, allowed payment to outside counsel prior to review of the invoice and resulted in some overpayments. We discontinued use of the APP on December 31, 1991. As described above, RLIS contains numerous procedures to prevent overpayments or unauthorized payments from occurring: RLIS contains built-in controls that prevent invoices with duplicate invoice numbers and overlapping billing periods from being paid; RLIS will not allow invoices which exceed the matter's budget to be paid; RLIS provides for detailed review of select invoices; and, with the exception of inherited firms, RLIS will not allow payment of invoices submitted by outside counsel without a current Legal Services Agreement.

Although the APP has been discontinued, we are in the process of reconciling the amounts paid to outside counsel with the amounts approved for payment by the Legal Division to detect any overpayments. With the assistance of an outside contractor, we will reconcile all payments made under the APP above a preset dollar value and will pursue collection efforts for overpayments.

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VII.

CONFLICTS OF INTEREST

The Report raises several concerns about compliance with conflicts of interest policies and procedures. The Report expresses the concern that information about conflicts of interest is not adequately disseminated to RTC attorneys for use in the selection and retention of outside counsel. The Report recommends that we ensure that the conflicts of interest information system currently being developed provides detailed information about conflicts of interest, including restrictions and conditions for each conflict. The Report raises the concern that not all conflicts of interest are reported to the Conflicts Committee, which could potentially result in inconsistencies in handling conflicts, and that our policies fail to address enforcement sanctions for firms who fail to report conflicts of interest. The Report also charges that the Conflicts Committee's policies for addressing conflicts are not sufficiently stringent and create the potential for criticism. The Report recommends that we develop more stringent guidelines that promote the use of firms without conflicts of interest. The Report also recommends that the Conflicts Committee document the rationale for each of its decisions.

Communication of Conflicts Information

As mentioned previously, one of the values of RLIS is its capability to flag law firms which have a conflict of interest. The RTC Guide for Outside Counsel notifies outside counsel of their duty to disclose actual or potential conflicts of interest during the application process, and of their continuing duty to report conflicts of interest throughout their service to the RTC. The conflicts coordinator for the office which receives the report of the conflict of interest is responsible for ensuring that information about the actual or potential conflict of interest is entered in RLIS. The conflicts coordinator also submits waiver requests to the Conflicts Committee and updates RLIS after notification by the Committee of its decision. The conflict of interest information listed in RLIS is available nationwide to all Legal Division personnel.

Additionally, in order to provide more complete information about conflicts of interest and decisions of the Conflicts Committee, we are developing an information system specifically for conflicts of interest. The Conflicts Unit of the OCMS, in conjunction with the RTC's Office of Systems Development, is designing the RTC Legal Division's Conflicts Tracking System ("CTS") to ensure that conflicts of interest matters are promptly reported by the field offices to the Conflicts Unit in Washington and that such information is disseminated to the other field

APPENDIX

APPENDIX

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offices. CTS will be implemented by October 1, 1992.

CTS will organize and monitor information regarding outside counsel's conflicts of interest. The information for the database will be gathered in a format which will promote consistency in reporting of conflicts from the various offices and facilitate review of conflict waiver requests by the Conflicts Committee. The Conflicts Unit and RTC field offices will be able to access and/or input information regarding the nature of outside counsel's conflicts of interest, the financial institutions involved, the field's recommendations to the Conflicts Committee, and the decisions of the Conflicts Committee.

CTS will track each conflict of interest waiver request through all stages of resolution, including notice of the conflict from the law firm, the receipt of the waiver request, the preparation of the field office recommendation, and the decision of the Conflicts Committee (or other appropriate authority).

Most importantly, implementation of CTS will enable the Conflicts Unit to disseminate the decisions of the Conflicts Committee to all field offices in an easily accessible format without undue delay. With the implementation of CTS, all RTC offices will be able to receive the same information regarding conflicts of interest for all law firms nationwide and use such information in the selection and retention of outside counsel.

Currently, information about waiver decisions made by the Conflicts Committee is distributed by the Conflicts Unit. The Conflicts Unit distributes an action agenda to each regional office following each Conflicts Committee meeting. The action agenda lists the waiver requests considered by the Committee and their disposition, and describes the conditions, if any, under which the outside counsel requesting the waiver may continue to be utilized by the Legal Division.

Report of Conflicts to the Conflicts Committee

Where outside counsel is not yet representing the RTC, Legal Division policy requires that all conflicts of interest reported prior to the execution of an LSA must be referred to the Conflicts Committee, unless the Legal Division does not intend to execute an LSA with such outside counsel for reasons other than the conflicts of interest. Similarly, all conflicts of interest that are reported during the course of RTC representation by outside counsel must be brought before the Conflicts Committee for resolution, unless the conflict is resolved by outside counsel.

The implementation of the CTS will ensure prompt reporting of all conflicts by the field offices to the Conflicts Unit and timely dissemination of the decisions of the Conflicts Committee to the

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field offices.

In addition, the Conflicts Unit is undertaking several initiatives to enhance compliance with the existing FDIC/RTC conflicts policy. Recently, the Conflicts Unit issued the Outside Counsel Conflicts Procedures ("Conflicts Procedures"), that strengthen the requirement for the field offices to forward conflicts or potential conflicts from outside counsel to the Conflicts Committee for decisions regarding waiver. The Conflicts Procedures provide specific sanctions against firms which fail to report conflicts of interest. Outside counsel who fail to fully disclose actual or potential conflicts of interest in a timely manner may be subject to one or more of the following actions: (1) a letter of reprimand; (2) a suspension of new referrals; (3) a withdrawal of all pending matters; (4) the rescission or denial of an LSA; and/or (5) a referral to the appropriate state licensing authority.

The Unit will also be implementing periodic visitations for the purpose of auditing field office compliance with conflicts procedures and policies. In addition, each field office has a conflicts coordinator who works closely with the Conflicts Unit's staff to ensure uniform compliance with conflicts policies and procedures.

Conflicts Committee Decisions

The Report raises a concern about potential criticism of Conflicts Committee decisions and specifically addresses the Conflicts Committee's decisions to grant waivers in several instances to law firms whose employees defaulted on substantial loans from insured depository institutions, firms which represented bidders for RTC assets, and in cases where regional Legal Division personnel recommended that a waiver be denied. Decisions on conflict of interest issues are made by the joint FDIC/RTC Conflicts Committee. While the Conflicts Committee carefully considers the recommendation of the field staff in reaching its decisions, the delegated authority to waive non-technical conflicts rests with the Conflicts Committee.

The Report acknowledges that the waivers of personal conflicts of interest in all of the cases examined were conditional in nature. "Conditional" in these cases meant that the partner having the conflict was required to resign from any management position within the law firm or be denied participation in the management decision-making process, and was further prohibited from working on RTC contracts and sharing in the profits generated from such contracts.

The Report also acknowledges that all of the waiver decisions examined fell within the Conflicts Committee's policies and

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procedures, and recognizes that FIRREA only prohibits contracting with any individual who has caused a substantial loss to federal deposit insurance funds, and does not prevent the use of firms whose members have caused such losses. Waivers of law firm conflicts of interest are granted or denied by the Conflicts Committee based on the requirements of FIRREA, the applicable regulatory provisions, and the Guidelines of the FDIC/RTC with Respect to Conflicts of Interest (dated May 2, 1990). As acknowledged in the Report, all of the waiver decisions examined fell within the Conflicts Committee's policies and procedures and within statutory boundaries.

The RTC regulations governing conflicts of interest do not compel mandatory disqualification of a contractor when an employee of the firm has caused a substantial loss to a federal deposit insurance fund, or when a firm has previously represented bidders for RTC assets. Nevertheless, the RTC may determine, in its discretion, that such circumstances warrant disqualification of the firm. (If the individual causing the loss to a deposit insurance fund has filed for bankruptcy, disqualification of the firm would be prohibited.) With the implementation of RLIS and the development of CTS, RTC attorneys are aware of actual and potential conflicts of interest and may use such information in the selection and retention of outside counsel.

Despite the separation of the RTC and FDIC Legal Divisions, the Conflicts Committee is structured as a joint FDIC/RTC committee so as to ensure uniformity of RTC and FDIC outside counsel conflicts of interest decisions. Accordingly, policy changes requiring a more stringent standard for waiving conflicts of interest would significantly impact the Conflicts Committee's decision-making processes and must be approved by the FDIC as well as the RTC.

It may be permissible for the FDIC and RTC jointly to adopt new conflicts policies setting forth a blanket rule that waiver requests will be denied without exception under the circumstances set forth in the Report. However, it would be a drastic change from current policy. The impact of such a rule on the availability of outside counsel to the RTC and FDIC must be carefully considered before such a policy is implemented.

Documentation of Conflicts Committee Decisions

Currently, limited information about decisions made by the Conflicts Committee is available nationwide in the RLIS database. It is anticipated that the CTS will provide, in some abbreviated form, the rationale for each decision of the Conflicts Committee to provide guidance to RTC attorneys. An abbreviated rationale for the decision will assist attorneys in the selection and retention of outside counsel and in drafting recommendations to the Conflicts

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Committee in connection with waiver requests.

VIII.
CONCLUSION

The Inspector General's audit was performed from March 1991 to August 1991, prior to the creation of the separate RTC Legal Division and the Outside Counsel Management Section. Consequently, most of the concerns expressed by the Inspector General in the Report refer to policies and procedures which were in effect prior to the separation of the RTC and FDIC Legal Divisions.

We recognized that not all of the policies and procedures in place at the time of the separation were well adapted to the nature and volume of RTC operations. Therefore, we have moved rapidly to implement new policies, procedures, and systems which will more effectively address the management and information needs of the RTC Legal Division. Although the Report provides confirmation that concerns addressed by the Legal Division were exactly those which should have been addressed, we want to ensure that the significant changes and improvements already made by the Legal Division are recognized. RTC Legal Division policies, procedures, and systems implemented subsequent to both our separation from the FDIC Legal Division and the completion of the audit work address the concerns raised in the Report and are responsive to the recommendations made by the Inspector General.



Resolution Trust Corporation
Office of Inspector General, Office of Investigation

JULIE F. YANDA, RTC, Professional Liability Section (PLS) Chief, 7400 West 110th Street, 3rd Floor, Overland Park, KS, telephone number (314) 344-8437, on May 12, 1993, provided Special Agent (S/A) Thomas LaCalamito and Assistant Regional Inspector General Phillip L. Sprague copies of her electronic mail (e-mail) messages she had retained regarding the request for records on AMERICAN SECURITY FEDERAL SAVINGS & LOAN ASSOCIATION (AMERICAN SECURITY), JEFFREY B. LIEBERMAN, and the law firm of BARACK, FERAZZANO, KIRSCHBAUM & PERLMAN (BARACK). Examination of those e-mail messages established the following:

<u>Date</u>	<u>To/From-Summary of Contents</u>
2/8/93-	YANDA to SUE THOMPSON- requesting all fee bills be gathered for IG and other documents regarding BARACK law firm and two other law firms. YANDA said she needed it "pronto."
2/9/93-	S/A MICHAEL KOSZOLA to YANDA- requesting the revised budget increase concerning AMERICAN SECURITY. Also asked whether payments were received by RTC on litigation.
2/9/93-	YANDA to KOSZOLA- 2 page e-mail discussing information on the 3 law firms he inquired about. States that legal is pulling all this information for you and there are literally hundreds of bills in RLIS, many of which she believes are probably related to commercial, as opposed to PLS, matters.
2/9/93-	YANDA to KOSZOLA- she says, as included in her earlier e-mail to him, she knows he wants documents and they are working hard to get them. Files are in transit and documents are numerous. Also, legal is in the midst of a series of statute driven cases. She promises to do her best.
2/9/93-	KOSZOLA to YANDA- KOSZOLA names 6 institutions where BARACK is involved and asks for copies for case plans, budgets, and amendments on the six.
2/9/93-	YANDA forwards KOSZOLA's e-mail to SUE THOMPSON- to request dates requested by KOSZOLA.
2/10/93-	YANDA to KOSZOLA- dates each institution retained BARACK was provided.
2/10/93-	KOSZOLA to YANDA- asked if YANDA knows the estimated value of the claim and legal fee budgeted for LEMONT FEDERAL.

By: <i>VS</i> Sprague/LaCalamito	Date Prepared: 5/13/93	File No: KC-93-0035
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ROIA, KC-93-0035

- 2/10/93- YANDA to KOSZOLA- provides information on LEMONT. Told him there was no risk value established yet on this case.
- 2/10/93- KOSZOLA to YANDA- Asking amount of damages at LEMONT, what does RTC expect to recover at LEMONT. KOSZOLA says he understands every RTC department is understaffed. "The OIG is requesting, as soon as possible, the written documentation by LIEBERMAN recommending or authorizing BARACK to be hired for LEMONT and a copy of every budget amendment that LIEBERMAN, as PLS chief, recommended or approved for other ligation involving BARACK. Thanks"
- 2/10/93- YANDA to KOSZOLA- YANDA states to KOSZOLA that she is doing the best she can with limited resources. States she has mobilized all her support staff to accommodate his request as soon as they can gather the enormous amount of information and documentation he requested. She informs him much of the material is in transit, but she is copying what they have there. States she is leaving the next day and will not be back until the following Wednesday. Explains to him that most of the case referrals were made by Washington prior to the Chicago PLS office being established.
- 2/11/93- BOOZ to YANDA forwarded to KOSZOLA- Told KOSZOLA that this was follow up to his question on 2/10/93. Loss numbers will exceed bond amount of \$2.7 million.
- 3/10/93- KOSZOLA to YANDA- asked if she would be able to meet 3/16/93 deadline, as set forward in the subpoena, to obtain the BARACK records. "If you are not able to meet the deadline, please notify me by 3/12/93."
- 3/10/93 @4:22 p.m. YANDA to KOSZOLA- States she has been steadily working on this since his original request. The paralegal who has been tracking down the voluminous documents has been working on this as well. Says they are doing their best to identify any gaps in the information they have compiled thus far. She promised an update the next day. States she already sent some of the material to AUSA.
- 3/10/93 @4:47 p.m. KOSZOLA to YANDA- Stating if you sent documents to AUSA, please send a copy to me. In the future, please send the documents to me and a copy to the AUSA.
- 3/10/93 @4:56 p.m. YANDA to KOSZOLA- States she does not think she can make another copy for him on this short notice. She further states "If you want to delay the production date, which we are working feverishly to meet, please let me know. I have no problem making you a copy, but copy services around here are a prized, limited commodity!"

**OFFICE OF
INSPECTOR
GENERAL**

RESOLUTION TRUST
CORPORATION

Office of Investigation ■ North Central Region

DATE: June 2, 1993

MEMORANDUM TO: Daniel L. Sherry
Regional Inspector General for Investigation

FROM: George F. Sullivan *gfs*
Asst. Regional Inspector General for Investigation

SUBJECT: S/A Koszola's GJ Subpoena to the RTC - KC-93-0035

The first time I was aware of a subpoena to the RTC PLS in Kansas City was after it was faxed to them. I am not sure if it was the same day or a couple of days later. S/A Koszola was standing by the fax machine, and I engaged him in conversation by inquiring how the LIEBERMAN investigation was progressing. He advised me that he had not received the records he had requested from the RTC and had subpoenaed them.

S/A Koszola and I then had a conversation about the other methods which could have been employed in order to achieve the same end. I pointed out to him that we had a staff of investigators in KC who would have inquired why we were not getting cooperation and determined the location of the requested records.

S/A Koszola was then instructed to convert the complaint to a case. I expressed my concern to S/A Koszola that the information he described as having requested from PLS was far beyond the scope of the investigation. He had requested information relating to all of the billing presented by BARACK FERRAZZANO KIRSCHBAUM AND PERLMAN for all of the litigation they had been doing for the RTC. (This would have been volumes of records.) The information preceded LIEBERMAN's arrival at the CCO and participation in awarding of the contracts; therefore, it was not germane. Koszola explained that the subpoena was more restrictive than his original request of PLS.

I subsequently found a document in Koszola's records which was a memorandum to the AUSA requesting the subpoena. The memorandum was never presented for my review or discussion. It did not have my initials on it and, when it was faxed or delivered to the AUSA, it violated office policy. I review everything going out of the office. I do not recall anything more specific about the subpoena itself, only the above described circumstances surrounding it.



THE DEPUTY SECRETARY OF THE TREASURY
WASHINGTON

September 28, 1993

The Honorable Donald W. Riegle, Jr.
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Don:

Secretary Bentsen and I are deeply troubled by the allegations made by witnesses at the RTC whistleblower hearing held last Thursday, September 23 before the Senate Committee on Banking, Housing and Urban Affairs. Allegations of harassment, retaliation against whistleblowers, EEO violations, inappropriate hiring practices, contracting improprieties and the failure to aggressively prosecute legal claims against wrongdoers are disturbing and we take them very seriously.

At my direction, the RTC has begun to review and summarize the allegations specified at last week's hearing. No matter what it takes, the RTC will get on top of these problems.

I do want to say, however, that the RTC is in better shape now than when we inherited it. There is now a chief financial officer, we have nominated a chief executive officer and we are on the verge of selecting a general counsel. The contracting systems have been thoroughly overhauled, as have the audit follow-up procedures, and the small investor program and the affordable housing program are successes. Moreover, we have strengthened the minorities and women's programs at the RTC. Speaking frankly, if we hadn't made such changes, I don't think the House and Senate would have voted recently to extend funding for the RTC.

Having said that, we can all agree that there is much left to do, and we want to work closely with you to accomplish it.

Let me address directly the whistleblower controversy. The Clinton Administration strongly supports the rights of whistleblowers. No agency is perfect in this regard, and the RTC undoubtedly can and must do better. We'll see that it does.

As you may know, I personally reviewed the whistleblower case in Denver. Jean Hanson, Treasury General Counsel, also delved into it in depth, and there was an RTC I.G. report on the subject and the Treasury I.G. investigated it as well. We all concluded that no laws were broken, however, that isn't to say this situation was handled appropriately and that it certainly should not serve as a model for future action. I had earlier informed Congresswoman Schroeder of these conclusions.

We are going to distribute a new memorandum to all employees that reaffirms the RTC's policy of protecting whistleblowers against retaliation. The memorandum will state that the RTC encourages the reporting of suspected wrongdoing and mismanagement and will set forth a complaint channel that makes accessible even the most senior management officials. The memorandum will emphasize that the RTC will not tolerate retaliatory acts and will investigate and address appropriately all charges of such activity. In keeping with our existing policy, we will take special care to ensure that any personnel or administrative actions involving the witnesses who testified at last week's hearing have independent merit and are not reprisals for whistleblowing.

Next, let me comment on the very serious and disturbing allegations surrounding the Professional Liability Section.

As you know, the GAO's study of the RTC's PLS program, released two months ago, found "no indication that RTC or PLS management sought to undermine the professional liability work." The GAO did find some risk that future claims may suffer from inadequate staffing and the staff's lack of experience. In addition, the GAO pointed out that, because RTC is a temporary agency, it is difficult to attract and retain PLS attorneys and recommended that the RTC work with the FDIC to analyze and address the staffing needs of the PLS program.

In the spirit of the "Thrift Depositor Protection Act" that recently passed the Senate, the RTC has relied heavily on the GAO's conclusions in developing their approach to solving the problems at PLS. Aggressive pursuit of wrongdoers is a high priority for this Administration. In fact, it is an important part of the ten point management reform program that the Secretary mandated and that I have been implementing in my capacity as Interim CEO. We are discussing staffing issues with the Acting Chairman of the FDIC.

One of the witnesses at the hearing suggested that PLS attorneys, particularly in Texas, had failed to pursue numerous PLS cases because of inadequate investigations. This assertion differs from the GAO's conclusion that its review of close-out memoranda showed that decisions not to pursue cases were based on "good faith and plausible litigation judgments." If, in fact, the GAO reached inaccurate conclusions, or reached its conclusions on insufficient information, it might be appropriate that you give serious consideration to directing the GAO to reassess its conclusions. We would like to discuss this with you further, and explore alternative investigative possibilities.

We also are prepared to refer each allegation of misconduct, fraud, or waste to the RTC Inspector General. Any allegations that relate to the IG's office will be referred to the Treasury's Inspector General. At the same time, the RTC stands ready to work with you and Members of the Committee to discuss practical alternative review mechanisms including investigation by the General Accounting Office when such action may be deemed both reasonable and warranted.

- 3 -

More generally, our review of last week's allegations suggests three different categories. The first involves those where the RTC has already have initiated reviews. These are currently in the Inspector General's office, the Office of Ethics, the Office of Contractor Oversight and Surveillance or with RTC senior management. The second category involves matters which one of the offices listed above already has reviewed and where the review is complete. We will now go back to see if the reviews and follow-up action were sufficiently thorough.

There is a final category of charges, of course, which haven't been formally reviewed before. In some cases, the RTC knew of the claim but didn't believe it warranted a formal review. In other cases, the charge is brand new.

We will now investigate all three categories to determine if prior reviews were thorough, if current reviews are proceeding as they should and to investigate the new allegations.

Let me emphasize that we take these complaints with utmost seriousness. We will provide to you, as soon as possible, a list of every single claim and the status of our review. I'm sure some of them are valid complaints and expose weaknesses at the RTC. I want to assure you that we will work closely with you to ensure that the problems which your witnesses illuminated are remedied.

Best regards.

Sincerely,



Roger C. Altman
Interim CEO

October 7, 1993

The Honorable Donald W. Reigle, Jr.
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington D.C., 20510

Dear Mr. Reigle:

I have read the transcript of Thomas Burnside's testimony, a draft response to some specific issues prepared by RTC Director of Investigations Jim Dudine and several pieces of correspondence which relate to the September 23 testimony.

After several days of agonizing over whether to write to you, I have decided that I must express myself. My range of emotions, over what has happened to the Investigations Department in RTC Dallas, has varied from total disbelief to anger, to outrage to insult.

First, there was the total lack of national policies, focus or direction from the Washington DC Office of Investigations. Each field office was left free to operate and develop policies and procedures. (Little wonder the consolidations have been so difficult.)

Then there was the lack of a cooperative spirit between the PLS attorneys and the Investigators. I initially attributed it to a difference in work ethics, but it later became obvious that there continuous efforts by PLS Attorneys to thwart the completion of full investigations.

We could literally spend days discussing the "could have beens" and the ensuing scenarios regarding our investigations "if only" PLS read our work products, had issued subpoenas, responded to a legal question, advised Investigations early on of potential pitfalls, had shared their knowledge with Investigations and listened to us when we shared our knowledge with them! (PLS actually had the nerve to accuse Investigations of working late to create documentation showing the problems between PLS/Investigations. If PLS bothered to look at any of the documentation when it was originally sent to them, they could see that we did not have to "create" this documentation, that there was a steady stream of documentation going into their office, which was not acknowledged, read or responded to.)

Then there was the first re-organization of the RTC in 1992. Input on how to best implement the consolidation was not elicited from the management staff. The information provided by the field management regarding the manpower needs was found by Washington to be overstated, but when pressed for assumptions, guidelines or specific suggestions, Washington personnel could not respond. (This is typical, field management was consistently criticized for products, but when specific guidelines or assumptions were sought, no answer was available.)

Dallas Management was not in support of the consolidation of the offices, and believed it was at least a year too soon; however because of the professional attitude, local management committed time, staff and other resources to the consolidation effort. Dallas Management was required to develop and implement their own consolidation plans, work out the inconsistencies, absorb the case load, and replace the investigators lost to consolidation. All this, while trying to keep the Investigators focused on developing cases and supporting litigation efforts!

Unfortunately, during this time frame (winter 1992-93) the relationship between PLS/Investigations was extremely strained. (The weekly management meetings had stopped and the investigators were trying valiantly but futilely to get some PLS response.)

Then the ICING on the cake!! Tom Burnside filed his grievance, and asked me to be his representative. Having worked with Tom for nearly 2 years, I found him to be very honest and a person of high integrity. After learning of the basis for his grievance, I immediately offered unconditional support. Dallas Management recognized the risk we were taking, siding with an unpopular individual against a group who could hurt the department's efforts to reach their goal. Although the thought of retaliation had crossed our minds, we had no clue that the results could be so devastating.

As for the grievance, it never went anywhere. RTC management has a knack for burying their head in the sand, and hoping that if a problem is not acknowledged, it will go away. Ultimately, Tom Burnside did go away, but he is not the problem. POOR management is the problem.

And the relationship between PLS and Investigations got even further strained. Dallas Management tried to inform the Washington Investigations Management of the problems, however, the message fell on deaf ears. Once again, the "avoidance management" theory was practiced. Even a meeting of the Directors of Investigation and the Vice Presidents of the four offices and Washington Management could not offer any solutions. Once again, the highest levels of management could not take a stand, to ensure that the mission of the corporation was met. Washington Investigations Management did not listen to Dallas Investigations Management, and

it became apparent that there would not be a fair hearing and resolutions would be one-sided. I acknowledge that Dallas Investigations is not perfect, and that there are some internal problems, however, the flaws are not fatal.

Instead of fair hearing and an effort to resolve problems with existing management, a team from Kansas City has decided that the Dallas Management team must be restructured. Today it was official that we will change from 3 managers to 9! The decisions were made in a vacuum, almost no discussion was held with the Dallas Management. There was no attempt to find out how and why the Dallas office was structured, but an all out effort was made to have the Dallas Management "mirror" that of Kansas City. It is now obvious that the results of our investigative efforts are not important. Dallas Investigations has been very successful in recovering on our cases, we have a self-developed inventory system that has no equal, we have experienced a minimal number of problems in converting a national data base system and yet our office is being "fixed". I do not believe that the changes are good for the cases, the Department, the RTC and certainly not for the taxpayer! Office productivity has slowed, and I have serious concern about the ability to regain our momentum.

I have been told over and over that the PLS/Investigations' war is over. I agree, we have been in a cease-fire for several months. There has been an uneasy but peaceful atmosphere; how can you have a war when no-one is engaged? While the "war" may be over, there certainly is not a healthy, cooperative spirit between the PLS Attorneys and Investigators. There is still an exceedingly long time for PLS follow-up to issues, there is bad legal advice given, and there are still attempts to loop the investigators out of the process. Certainly, there is not a high level of comfort in this situation. I would rather witness an all out battle between the PLS attorneys and investigators, at least then I know there is some attempt at communication and action!

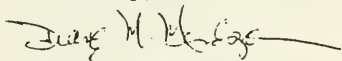
I have read Interim CEO Altman's Sept. 28, 1993 letter to you, in it he mentions two specific issues that I want to address. The first issue is the GAO review of closed out investigations. Mr. Altman indicates that the review of the close out memos evidence good faith and plausible litigation judgments. I suggest that maybe the review was not as far reaching as it should have been. I suggest that a complete, joint review of the entire investigative file and the PLS file be performed, to ensure the close out was the appropriate decision. I have been present at a meeting where a Close Out Memorandum and an Authority to Sue Memorandum were presented on the same institution. I understand that each memo read well, and appeared well supported and plausible. How can it be that two diametrically opposite plans of action on the same case are simultaneously appropriate?

The second issue, is that the senior management of RTC is heading the review of the allegations raised in testimony. I suggest that an independent review be conducted, and that the field management of the RTC offices be consulted. Dallas Investigations Management has identified many problems, their peers have confirmed that many of those same problems exist in their offices. I believe the fear of retaliation has stymied the protestations and silenced many who have identified problems and want real, workable solutions.

Through this letter, I believe I have identified a pattern, and I believe it is that there is poor management at the RTC. Yes, that is a broad brush, but in looking at the management of the Investigations Office and the PLS, I have to conclude that poor management is the root of many of our problems.

I have been a government employee for over 14 years, and this is the first time I have worked in such a tumultuous environment. I believe in the mission of the Investigation Department and have been deeply committed to fulfilling that mission. For over three years, I have been a Department Head in this Office, and I dearly hope that we can continue to be successful. We have a very experienced, dedicated staff in Dallas, who has survived a constant barrage of negative feedback, continuous change and attacks on their work and their integrity. Nobody and no office is perfect, but if someone bothers to look closely at the Dallas Office of Investigations, they will find that the staff here is trying to fulfil the corporate mission, and not fulfil personal agendas. I invite you to visit the Dallas Office, to meet with all levels of staff and get a real taste of what is going on here.

Sincerely,



Diane M. Mendoza
Assistant Director - Investigations



United States
General Accounting Office
Washington, D.C. 20548

General Government Division

July 23, 1993

Mr. Bruce Pederson, Counsel
Resolution Trust Corporation

Dear ^{Bruce}Mr. Pederson:

Enclosed is a copy of our final report entitled Thrift Failures: Actions Needed to Stabilize RTC's Professional Liability Program (GAO/GGD-93-105) that was released by the Senate Banking Committee on July 19. The report discusses how RTC's ill-conceived actions have demoralized and disrupted the Professional Liability Section (PLS) program.

I personally wanted to send you a copy of the report and thank you for all the help you gave GAO during our study. Your insight into PLS's operations were invaluable as we assessed the Section's staffing, litigation policies, and pursuit of professional liability claims. Thank you again.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Ed H. Stephenson, Jr.", with a stylized flourish at the end.

Edward H. Stephenson, Jr.
Assistant Director

PATRICIA SCHROEDER
1st District Denver Colorado

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Congress of the United States
House of Representatives
Washington, DC 20515-0601

ARMED SERVICES COMMITTEE
CHAIRWOMAN SUBCOMMITTEE ON MILITARY
INSTALLATIONS AND FACILITIES

POST OFFICE AND CIVIL
SERVICE COMMITTEE
JUDICIARY COMMITTEE
CHAIRWOMAN SELECT COMMITTEE
ON CHILDREN, YOUTH AND
FAMILIES
CONGRESSIONAL CAUCUS FOR
WOMEN'S ISSUES CO-CHAIR

April 14, 1993

Bruce Pederson
Resolution Trust Corporation
707 17th Street, P.O. Box 5410
Denver, CO 80217

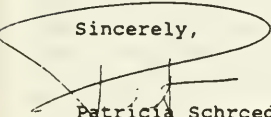
Dear Bruce:

I just wanted to send you a personal note to thank you for your efforts to eliminate waste, fraud, and abuse at the Resolution Trust Corporation (RTC).

The information you provided to my office and to the House and Senate Banking Committees is invaluable. You have raised legitimate questions about the way that taxpayer money is spent. Without employees like you, we would never cut government waste. You are to be commended.

Keep up the good work!

Sincerely,


Patricia Schroeder
Congresswoman

cc: Barbara Shangraw, Assistant General Counsel, Western
Regional Office

Richard Aboussie, General Counsel, RTC Washington

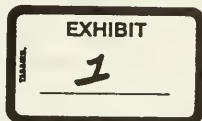


EXHIBIT 2

CAVALLO PRIZE FOR MORAL COURAGE
ACCEPTANCE SPEECH

BRUCE J. PEDERSON

JUNE 9, 1993

The strange twists and turns we call life bring us to places and circumstances far beyond our wildest dreams. Call it fate, destiny, or serendipity. Three years ago, I never would have imagined receiving a prestigious award for moral courage. It required an unprecedented series of events: the greatest financial scandal in our nation's history, my service as a manager with the Professional Liability Section ("PLS") of the Resolution Trust Corporation ("RTC"), and the unparalleled mismanagement at RTC which I attempted to expose during the past tortuous year.

I don't regard my efforts as particularly extraordinary. I merely did what I felt was right. I revere the truth and am offended by those who seek to distort or destroy it. The purest form of public service results from adhering to the truth. For me, these beliefs lessened the burden of the hurtful price I paid for speaking out on behalf of the taxpayer. Other whistleblowers have had far more taken from them. Indeed, I am humbled by the substantial sacrifices made by other recipients and nominees of this award.

A lot of people deserve my heartfelt thanks for this award. First, and foremost, I want to express my deep appreciation to Michael Cavallo and the Cavallo Foundation. Without his efforts and resources, there would be no award. The Cavallo Prize for Moral Courage is a beacon which reminds us that people still do the right thing even when the easier path leads in the opposite direction.

Second, I want to thank my dear friend, Jackie Taylor. During our past 18 months of hell spent in a bitter agency "turf war" and ensuing retaliation, Jackie was my immediate partner in exposing RTC waste and abuse. Her support and encouragement when everything in our professional lives fell away was irreplaceable. Most whistleblowers do not have the luxury of having a nearby colleague engaged in the same activity. I am extremely grateful for her presence in my life. Our colleague, Brad Smolkin, also deserves praise for his support and brave testimony in Congress last August.

Next, I want to thank those people who helped me *disseminate* the message that the American taxpayer was being ripped off by the insane reorganization of the RTC PLS. Many agency employees provided me with useful information. I won't publicly acknowledge them by name because to do so would subject them to swift and predictable retaliation. I will, however, dedicate this award to Virginia McCrae, one of my former colleagues and a close friend. Ginny was an RTC PLS lawyer in Denver who passed away last July from a sudden heart attack at the age of 36. She joined RTC PLS not long after I did and was instrumental in feeding information regarding the crippled PLS Program to Jackie Taylor and myself after we had been kicked out of our managerial positions. Despite great risk to her standing within the Legal Division, Ginny fearlessly chose to associate with us in public and confirm our fears about the direction of the new PLS Program. She did so right up to the day she died. Ginny was the embodiment of moral courage.

My disclosure efforts were escorted by a collection of guardian angels who appear as the employees at the Government Accountability Project ("GAP"). Director Louis Clark, Legal Director Tom Devine, Legislative Counsel Jeff Ruch, and others at GAP were invaluable sources of legal, strategic, and emotional support during the past year. All were immensely helpful in guiding my preparation of congressional testimony and surviving the ensuing waves of retaliation at the RTC. Without GAP, many public and private sector whistleblowers would never be heard. GAP's work honors truth and the public interest. It deserves your financial and moral support now and always.

My efforts to speak the truth about the RTC also were immeasurably helped by members of the media who followed the PLS reorganization. Recognition must go to those reporters who advanced the story by analyzing the "spin control" offered up by the RTC. Susan Schmidt of *The Washington Post*, Jeff Gerth of *The New York Times*, Marianne Lavelle and Sherry Sontag of *The National Law Journal*, Dick Keil of the Associated Press, Steve Wilmsen of *The Denver Post*, John Rebchook of the *Rocky Mountain News*, Jeff Barker of *The Arizona Republic*, Mike McGrath of *Denver Westword*, Steve France of the *Bank Lawyer Liability Reporter*, and Michael Hsu of the *RTC Report*, among others, all played an important role in the written effort.

Special thanks also must go to CBS News *Street Stories*. Producer Glenn Silber, reporter Jerry Bowen, analyst George Clyde and host Ed Bradley did a terrific job of bringing this story into the living rooms of American taxpayers. Peter Boyle of KBYG and Dennis Burkhardt of KDEN, through their Denver radio talk shows, also provided a valuable forum for the truth. I also anticipate that NBC News and producer Jess Bushyhead will make use of my retaliation experience in an upcoming *First Person* with Maria Shriver piece about employee privacy that will air in July.

This impressive collection of journalists exposes the fallacy of the RTC position that what Jackie Taylor and I have to say about the PLS reorganization is of little value to understanding agency operations and that no one is really interested in the issue. I submit that millions of American taxpayers disagree. Mismanagement of public programs, particularly on the huge scale of the RTC, never loses its newsworthiness.

The next major category of people deserving my thanks are those who *listened* to my message. Contrary to the RTC's "party line" that I was a malcontent bent on merely complaining about the loss of my management position, there was a receptive audience that found value and truth in what I had to say about the PLS Program and the taxpayer's interests. The list is lengthy, but bears mentioning. It begins with several members of the U.S. Senate Committee on Banking, Housing, and Urban Affairs before whom I testified last August. These include its Chairman, Donald Riegle and former Senator Tim Wirth. Senator Howard Metzenbaum also participated in the committee's work regarding the RTC. Members of their staffs, including Konrad Alt, Mike Perko, and Brian McTigue, worked long and hard to help focus the spotlight of oversight on the RTC.

Other congressional offices which listened to my message included my representative in Congress, Patricia Schroeder, and Congressman Bruce Vento. Members of their staffs devoted considerable time digesting what I had to say. These included Doug Nelson and Neal Peterson.

I also want to thank the members of the U.S. General Accounting Office ("GAO") who spent countless hours documenting the lack of rational planning and senseless carnage caused by the PLS reorganization. Led by Assistant Comptroller General Richard Fogel who took the time to personally debrief us in Denver, many GAO employees were involved. Chief among these were Henry Wray, Ed Stephenson, Drew Valentine, Lynn Gibson, and Mary Lane Renninger. I anticipate that their final report regarding the RTC PLS will corroborate many of the concerns Jackie and I voiced last August.

Finally, members of my family and various friends deserve my gratitude for their emotional support during these many grueling months. Your encouragement helped keep me going when life seemed very futile. This diverse group ranges from my mother to my coworkers who shared that knowing nod or smile with me on one of my darker days which told me that I was making a difference.

I wish to leave you with a few thoughts on "moral courage." After all, that concept underlies the Cavallo Award. The dictionary variously defines courage as the moral strength to persevere and withstand fear or difficulty. As a word, courage has its roots in the French word for heart, which is "coeur." Moral is defined to mean the principles of right and wrong. I believe that a person exhibiting moral courage displaces fear in order to point out the truth. That process begins in the heart and is sustained by the spirit. It occurs in spite of the mind where fear resides.

Moral courage is paradoxical. It is universal yet difficult to manifest. Mustering moral courage to speak the truth is not something reserved for special people otherwise known as heroes. It is a quality inherent to all of us that patiently waits to be released. Your potential is no different from mine. The only difference is that people are out of touch with their moral courage in varying degrees.

To tap into moral courage each individual must shift from fear driven conduct to proactively advancing the truth. The process is *not* easy. In the case of whistleblowing, it cuts against years of conditioning designed to maintain a safe career path and financial security. It also requires a person to weather, from day to day, the many forms of retaliation which are limited only by the arrogance of hostile management. Culpable managers will threaten or take away jobs, future promotions, current responsibilities, grade or pay, office space, privacy, working relationships, and one's reputation. I endured many of these reprisals at the RTC. There also exists the widespread perception that no effective legal protections exist for those who speak out. Whistleblowing has been described as the "sound of professional suicide."

The most formidable obstacle to speaking the truth is not always apparent at first glance. For me, the hardest part was the emotional devastation inflicted by management's retaliation. My career of public service, the PLS work I loved and excelled at during the past seven years, cherished working relationships with friends and

colleagues, privacy, and reputation were all yanked away or attacked. A big piece of my identity was suddenly gone. I felt thrown off a secure location into a bottomless abyss. These were the kind of times contemplated by the Spanish mystic St. John of the Cross when he wrote of the "dark night of the soul." Fear constantly attempted to hijack my decision making powers. Its offspring, loneliness and rejection, crept in as former friends and associates, fell away under the weight of changed circumstances at work. The demons of self-doubt—"why did I do this," "what could have been," "what will people think," and "what will become of me"—relentlessly returned to haunt at the times of greatest despair. For me, exercising moral courage involved passage through a test of fire. I needed perseverance and mettle to survive the process.

So, how does one overcome fear in order to exhibit moral courage? Against all of the foregoing disincentives, the process must begin somewhere. I submit that it commences with the realization that truth has been violated in some significant fashion. One is left with the bottom line conclusion, "This is wrong." There is a very real power to this event. It provides the advocate with the facts and understanding necessary to expose the lie or distortion. In so doing, the truth becomes easy to defend. It has its own seamless integrity, eloquence and appeal. By contrast, management "spin control" rings hollow when sounded by the truth.

Next, one must refuse to buy into the currency of fear used by culpable management. Those hoping to cover up waste, incompetence, fraud or abuse anchor their power base by intimidating employees with the risk of loss. This brutal system of governance works only as long as the rank and file subscribe to it. When one or more individuals stand up and refuse to allow fear of loss to dictate their actions, management has lost its leverage to cover up the truth. This shift in power can occur with one person, but works best with groups of people willing to speak out. I believe that the RTC's ability to sweep the sordid story of the PLS debacle under the rug was significantly impeded by the public stand which Jackie Taylor, Brad Smolkin and I took last year. We chose to deal in a different currency and stuck to our decision.

Next, one who aspires to demonstrate moral courage must recognize that life frequently cloaks opportunity inside a crisis. Instances where the truth is maligned are actually invitations to make a positive change in government or industry. Being at the epicenter of a coverup is life's way of calling one from the dugout to the batter's box. Accept the call! To do otherwise, is to miss your calling at best, and to be a part of the problem at worst. Be wary too, of the "cop outs" or rationalizations that deter so many from reaching their moral courage. These include self-defeating thoughts like, "I've got a mortgage to pay; let someone else do it" and "I can't make a difference anyway." Those statements are laced with fear and demonstrate an unwillingness to take responsibility for self and the community we share. Managers with something to hide desperately hope that employees will believe these lies.

Finally, it helps to adopt one or more role models. Over the past year, I drew on memories of my father, a former West Point officer, who taught me about "Duty, Honor and Country" and doing the "right thing." I also related to the character played by Al Pacino in the Oscar winning movie, "Scent of a Woman." He triumphed in the end by overcoming a lifetime of fear to eloquently speak the truth in a setting that was stacked against him.

Beyond the practical suggestions of how to overcome fear and tap moral courage, I must point out that the process is a reward in itself. Those who persevere to reach for the truth stand to receive several personal gifts. They can hold their heads high knowing that they did not "sell out." They know themselves far better after being tested through adversity. They provide a role model and inspiration for others who will follow in their footsteps on behalf of some other pivotal issue. I also would be remiss if I did not point out that whistleblowers do make a difference. One has only to review the many positive changes in our society that began with the spark of re-education by a brave soul that things did not have to be a certain way. The truth be said, there was a better, or more just way, to do things.

One such individual who saw things from a more truthful perspective was Mahatma Gandhi. Throughout my adult life, I have attempted to embrace his teachings. He once said, "My life is my message." My actions at the RTC are my latest statement of who I am. Needless to say, I am thrilled and deeply honored to be recognized for living my message. From my heart, thank you one and all.

EXHIBIT 3

KEY TO CATEGORIES AND CROSS-REFERENCES IN TIME LINE OF ABUSE

Patterns of abuse are sometimes difficult to recognize. This is especially true if one only has knowledge of an instance or two of abuse standing alone. The Time Line of Abuse of RTC Whistleblowers is a chronology of major events surrounding Jackie Taylor's and Bruce Pederson's attempts to bring to the attention of public officials for correction the significant harm and high cost of the RTC's 1992 reorganization of the Professional Liability Program. This time line graphically demonstrates the relentless manner in which RTC management attempted to "kill the messengers" instead of devoting their attention to correcting the problems.

For ease in reviewing the Time Line, columns have been set up entitled "Category" and "Cross-Reference". These columns contain phrases to alert the reader to the types of abuse involved in the specific entry. Phrases in the designation "Category" is a description of the primary type of behavior described in that entry. Because an event might involve more than one type of abusive behavior or RTC program the "Cross Reference" column contains phrases to alert the reader to related categories of abuse.

The key words and phrases used in the Time Line are defined as follows:

ANNOUNCEMENT—Events affecting the instances of abuse of programs and whistleblowers, but which are not specific items of abuse

ATTORNEY/CLIENT PRIVILEGE—Instances when RTC management violates others attorney/client privileges

CAVALLO—Instances related to Jackie's and Bruce's receipt of the 1993 Cavallo Award for moral courage in government and business

COMPUTER—Entries which contain behavior affecting the use of RTC computers

DIRECTIVES—Policy and procedure announcements by RTC management

DOCUMENT SHREDDING—Events surrounding RTC Denver's shredding of RTC documents

EEO—Situations related to RTC Equal Employment Opportunity programs and procedures

FOIA—Instances surrounding Bruce's and Jackie's attempts to secure information from the RTC under the Federal Freedom of Information Act

GRIEVANCE—Events surrounding the multiple grievance proceedings instituted by Bruce and Jackie

HARASSMENT—Instances of abuse occurring prior to Bruce and Jackie contacting Congress and occurrences of abusive behavior involving RTC personnel in addition to Bruce and Jackie

JOBS—Matters relating to reassignment of RTC geographic locations, job titles and duties

LEAVE TIME—Instances in which Bruce and Jackie are held to hypercritical or incorrect applications of time and attendance rules

MAIL—Instances of abuse relating to U.S. mail

MOVES—Instances of abuse relating to moving offices within the Denver area

RETALIATION—Multiple types of abuse that arise after Jackie's and Bruce's initial attempts to inform public officials in Congress of the wrongs occurring at the RTC

SLANDER—Those circumstances when members of RTC management slander Bruce and Jackie

TELEPHONES—Instances of abuse involving telephones

THREATS TO EMPLOYEES—Instances when RTC management directly threaten other RTC employees for their involvement with Jackie and Bruce

UNAUTH.COMP/UNAUTHORIZED COMPUTER ENTRANCE—Pronouncements and specific actions related to break-ins of RTC employees' computers

Time Line of Abuse of RTC Whistleblowers and Major Events - May, 1992 to September, 1993

Date	Description	Category	Cross-Reference
5/1/92	Jackie's PLS unit is scheduled to move from Central Bank Building to 17th Street Building. She is told to pack up to be ready to move on 5-1. This changes to 5-4 and then to first thing 5-5.	Announcement	
5/5/92	When the rest of the Intermountain Legal Department moves to new quarters, they forget to move PLS. After Jackie complains, the movers are recalled and they move the PLS offices. Two days later Jackie is told she will be returning to the building from which she just moved.	Harassment	
5/6/92	The Managing Attorney and the Deputy of the Denver Field Office interject themselves into a PLS fee bill issue without consulting with PLS. The Deputy falsely complains to the Managing Attorney about a PLS fee bill for from a Utah law firm related to a PLS case. Deputy does not tell PLS about his complaints until he after he has made it an issue in a legal managers meeting at which the PLS manager was not present. He has trumped up phantom PLS problems yet has no apparent management responsibilities for PLS. He has criticized how a specific PLS attorney made certain case specific decisions regarding the bill, yet he has named the wrong PLS attorney in those criticisms.	Harassment	
5/7/92	Denver Deputy hands Jackie the entire contents of her email directory (in hard copy). This occurs several hours before Jackie is told of her putback to the FDIC. Someone has tun hard copies for the Deputy without Jackie's knowledge and given them to the Deputy prior to that date. He comments that Jackie needs to delete some of her emails.	Unauth Comput	Harassment
5/7/92	Mid morning the putback is announced to Bruce and Jackie by three senior Denver legal managers (Transition Team) who state they made decision of who was to be returned to the RTC. Jackie and Bruce are told that their services were no longer needed by the RTC. Denver is the first field site in the RTC Legal Department to inform its staff of the putback announcements. Other legal departments do not make the official announcements for two weeks even though fairly accurate rumors of who will be forced to leave circulate within the RTC. Denver's legal putbacks are assigned to a special projects unit to do undefined work. Denver legal management claims it has no information as to when putbacks will be contacted by the FDIC, what the job assignment process is, nor to whom putbacks can talk for information even though Transition Team members have just returned from meetings about the reorganization in Washington, D.C. the previous night. Jackie and Bruce are told they will be moved to another building and relieved of all PLS responsibility on Monday May 11, 1992. Jackie had just moved out of that building two days earlier.	Announcement	Harassment, Moves

Date	Description	Category	Cross-Reference
5/7/92	Jackie writes to the Washington RTC Senior Personnel Attorney regarding Jackie's putback. Jackie expresses concerns regarding EEO aspects of the putback and asks questions about procedure. The attorney later calls and talks to Jackie but nothing is done in response to email. This is Jackie's first official questioning of the propriety of reorganization motives and processes	EEO	Whistleblowing
5/7/92	Jackie writes to the Washington RTC Senior Personnel Attorney and expresses concern that the Deputy is Jackie's new manager. Because of previous unwarranted hostile criticisms and comments made by the Deputy about Jackie and PLS, she is concerned that management will now try to make a trumped up case against her and Bruce based on performance issues. She fears this will be done in an attempt to justify management's questionable actions related to the putback process	Whistleblowing	
5/7/92	A Denver PLS line attorney writes to the new Denver PLS Section Chief expressing her concerns about the negative impact of the reorganization of the Denver PLS and the removal of Bruce and Jackie from PLS	Whistleblowing	
5/7/92	PLS AGC Beatty writes to General Counsel Jacobs and another senior RTC official expressing alarm over the putback process in Denver. PLS AGC states that staffing decisions made by the Western Region Senior Attorney were unrelated to performance and expresses his high opinion of the Denver PLS putbacks' legal performance	Whistleblowing	
5/7/92	Western Region Senior Attorney holds a legal department staff meeting to announce the putback of nine Denver legal employees-8 attorneys and 3 secretaries. When asked, he refuses to name the 9 putbacks because he feels they might be embarrassed. Instead, he makes disparaging comments to the staff regarding how it was decided who would be putback. At the meeting, Jackie asks him several questions about the process. He is visibly upset with her questions and does not have answers for them	Slander	Whistleblowing
5/8/92	Many small indignities are aimed at the putbacks by managers and numerous unpleasant things are being said. Some people are visibly avoiding the putbacks. Jackie and Bruce are in contact with PLS section chiefs in other locations and everyone notes that the Denver legal management is exceptionally cruel in their treatment of the putbacks. The anger of management directed at Jackie and Bruce seems even more intense than that directed at the other putbacks. This especially confuses Jackie since she barely knows two of the three transition managers. Rumors are everywhere but only Denver has announced it's putbacks and set up such a cruel agenda for them. Bruce and Jackie are told that the Western Region Senior Attorney has prematurely announced who would be putback from Denver	Harrassment	Slander

Date	Description	Category	Cross-Reference
5/8/92	Managing Attorney issues memo to PLS staff regarding reorganization. The tone of the memo suggest Managing Attorney has unfounded concerns about the PLS staff behaving in a professional manner	Slander	Harrasment
5/8/92	Jackie receives an email from the Washington RTC Senior Personnel Attorney with a message to call her. Later, Jackie calls the attorney and tells her about the Denver putback process. The attorney seems sympathetic, expresses ignorance about all the actions occurring in Denver, but acknowledges that she designed the putback process. The attorney states that she has not been consulted about some aspects of the Denver putback and asks Jackie to keep her informed of occurrences. Nothing is ever officially done in response to Jackie's concerns	Whistleblowing	Harrasment
5/11/92	The week of May 11, 1992 Bruce and Jackie meet with Denver Office of Inspector General staff to file a formal complaint related to suspected waste, fraud and abuse in the reorganization of the PLS	Whistleblowing	
5/12/92	Jackie and Bruce warn other PLS Section Chiefs of the allegations of incomplete files and missing documents, mismanagement innuendos, and other harassing comments being made about PLS by legal management. They describe the innuendos being made by the Managing Attorney about Jackie and Bruce trashing files and behaving in an unprofessional manner	Whistleblowing	Harrasment, Slander
5/12/92	The PLS paralegal tells Jackie that the Managing Attorney has made innuendos to the paralegal that the PLS unit was disorganized, mismanaged and had no reports, procedures etc. Managing Attorney was complains that new management now must organize PLS. Jackie writes him a memo setting out many of the reports and systems PLS had available. She receives no response to this email. Later Jackie learns that the Managing Attorney is making disparaging remarks and innuendos to various lawyers and support staff about Bruce and Jackie's behavior. The Managing Attorney tells others he is concerned that Bruce and Jackie might do something rash like destroy files. Jackie emails him objecting to his slanders and suggests a strict file check out procedure be set up and an inventory of the PLS file contents be made so that there can be no such problems. He never responds to Jackie. Her suggestions are never followed. Bruce and Jackie never again attempt to access the PLS files	Slander	Harrasment
5/13/92	The Deputy emails putbacks telling them that they are in a special projects unit he will supervise. He tells them that at the present time management does not have any work for the group, but management hopes to know what work will be assigned by the next week. He makes reference to the need to make use of the putbacks skills. Publicly, he and the other senior Denver legal managers state that the putbacks were not selected because of lack of competence. Privately, these same managers make disparaging remarks about the competence of the putbacks. Many such slanderous comments single out the PLS putbacks	Harrasment	Slander

Date	Description	Category	Cross-Reference
5/15/92	Jackie emails the Denver Transition Team asking questions about the putback process. Her questions are never acknowledged nor answered.	Harrassment	
5/15/92	While the Managing Attorney is out of town, Jackie receives a note from his secretary asking for all settlement information and copies of communications involving potential settlement in a Utah PLS case. Jackie requests the information from outside counsel and goes to lunch. While at lunch the Deputy (who is her section chief) slanders her to other PLS staff, calls her uncooperative and starts to rummage through the top of her desk. He suggests that he and the PLS staff go through her desk. The PLS staff present resist this suggestion and he quits rummaging through her desk. Jackie documents the situation in two emails to the Deputy and the Managing Attorney. Jackie never receives a response to the emails.	Slander	Harrassment, Unauthorized Search
5/15/92	Jackie emails the Washington RTC Senior Personnel Attorney, describing the Deputy's recent slanders and actions. Jackie reminds the attorney that on 5-7-92 Jackie had told the attorney that she feared this type of action would occur. Jackie receives no response to this email.	Harrassment	Slander
5/18/92	The Washington Post runs an article describing the outcry over the RTC reorganization and the possibility that PLS cases will be compromised.	Announcement	
5/18/92	Bruce and Jackie contact various Congressional members with concerns about the PLS reorganization.	Whistleblowing	
5/19/92	Bruce emails the Denver Ethics office asking for information regarding job searches and asking for information regarding the Whistleblower Protection Act.	Whistleblowing	
5/21/92	Lamar Kelly holds meetings for all the Denver RTC Staff to discuss the reorganization and answer questions. Jackie asks him why he required the legal department to select putbacks when legal work was increasing. She explains to him that the Western Region Senior Attorney had repeatedly said in staff meetings there would be no legal putbacks. Now they have been putback and the Senior Attorney told the legal staff it was due to severe pressure from Lamar Kelly. Jackie also asks other questions regarding the legal reorganization. Mr. Kelly is visibly angry at the Senior Attorney's comments and states that he is not able to answer the many of Jackie's questions. He promises to have an official from Washington visit Denver to answer the legal staff's reorganization questions since he does not know the answers. This never happens.	Whistleblowing	Retaliation, Harrassment
5/21/92	The other RTC offices notify the legal staff of their putback status. Several putbacks in other PLS sections (including those that had reported to Bruce) had already heard from outside counsel and from rumors within the RTC that they would be putback.	Harrassment	

Date	Description	Category:	Cross-Reference
5/22/92	Bruce and Jackie file a PLS Class Action Grievance and Bruce files a personal grievance questioning the methods and motives for the PLS reorganization	Whistleblowing	Grievance
5/22/92	Jackie initiates EEO process by asking that an EEO counselor who is not from the RTC Western Region be appointed to investigate her complaints of discrimination Jackie chooses an EEO counselor from Chicago Among the issues raised by Jackie is the fact that the Managing Attorney has stated in an email to others that he is keeping a file on Jackie who is "hysterical and paranoid"	EEO	Slander, Harrassment Whistleblowing
5/26/92	Jackie emails the Deputy (her section chief) to discuss the May 7 putback and her reorganization questions to the Transition Team She asks for his assistance to get the questions answered She receives no response to this email request	Harrassment	Retaliation
5/26/92	Jackie emails the Transition Team reminding them of her previously unanswered questions concerning the putback process and asking several more questions She never receives an acknowledgment of this or the previous emails Her questions are never answered	Harrassment	Retaliation
5/26/92	At approximately 1pm, Deputy tells the putbacks that they are to pack up their offices They are to be moved the next morning to a building apart from the rest of the legal department	Harrassment	Retaliation
5/27/92	Deputy refuses to sign Jackie's time sheet so she can be paid He seeks her out in another attorney's office to tell Jackie this in front of two staff attorneys The Deputy questions Jackie's behavior and truthfulness on the time sheet because she has included (as previously instructed) a notation with her year-to-date, documented, unpaid overtime hours He says Jackie asks too many questions and later calls Jackie "unprofessional" "hostile" and tells her that "the way Jackie walked around the office was hostile"	Slander	Harrassment Retaliation
5/27/92	Deputy tells the putbacks the move has been changed from Republic Building to Arco Building The move is postponed for a day The nine putbacks are told that at the ARCO building they will all need to use a lunchroom as their common workstation until their new offices can be vacated by others Later in the day the lunchroom move is cancelled then the entire move is rescinded Finally, it is announced that the move is back on but now will be to the Republic Building rather than Arco Two days later we move to Republic As our section chief the Deputy has an office allotted to him at Republic He does not use the Republic office but rather he stays in his office at 17th Street He never moves to Republic with us	Harrassment	

Date	Description	Category	Cross-Reference
5/29/92	<p>The 9 putbacks move to Republic to a floor which can accommodate perhaps two hundred employees. The floor is empty except for about 20 outside contractors (on the other side of the floor), an ISU person, and several auditors from other offices who are there once or twice a week. Our computer files are not transferred to our new location. When they are transferred many don't come with us. At first we are not listed in the email directory. No one from outside can get through to us on the phones. If they call the RTC main numbers, they are told we are no longer with the RTC. Jackie is having trouble pursuing her EEO case because of the confusion of the move, the downtime on computers, phones, faxes, etc. The offices are very small compared to the other Legal Department Offices. All of our files (especially Bruce's) will not even fit in the offices assigned to us. We are assigned the smallest offices on the floor even though there are numerous larger offices which are empty. There are few bookshelves and file cabinets. There are no supplies of any kind. We must get all supplies (such as paper, pens, etc) from the legal department across town. There is no building or floor security. Since the receptionist desk is covered by rotating people who are temporary, strangers wander in off the street.</p>	Harassment	EEO
5/29/92	<p>Deputy meets with putbacks to finally assign them some legal work. The assignments are mostly clerical or paralegal in nature.</p>	Harassment	Retaliation
6/1/92	<p>Putback staff does not appear on the new legal department telephone list and staffing chart for which is sent to all Denver personnel. No U S mail is being delivered to the Bruce and Jackie. The putbacks are not on the list to receive general emails directed to and from the legal staff. All announcements, directives, circulars, personnel information, training brochures etc. that are sent to the legal department and RTC staff are not sent to the putback group. The only way to find out the general happenings of the RTC is to call someone and rely on their memory. Our telephones roll to a receptionist desk for the contractors who do not know us. Many different people sit at this receptionist desk. They are not RTC employees and they do not know if we are at our desks or even in the building. We see very few RTC personnel in this building since most people we have worked with are across Denver and do not have the time to make the trip to this building. One lawyer who does visit for lunch is so fearful of being seen with us that she jumps in a closet to hide when the Deputy unexpectedly enters.</p>	Harassment	Retaliation, Telephones, Computers, Mail

Date	Description	Category	Cross-Reference
6/1/92	<p>A very critical "underground newsletter" entitled the "WalchDog" is circulated to the Legal Department. The next day it is circulated to the pubback group in Republic. The Western Region Senior Attorney (now the AGC) visits the Republic Building and meets with a pubback to determine if Jackie or Bruce wrote the item. The author is never identified. The general theme of the Walchdog is sarcasm over the low morale in the legal department due to the arrogance, mismanagement, personal idiosyncrasies and cruelty of legal department management, and their intimates. In response, management holds a staff meeting about the cruelty of the authors and about being nice to each other. Nothing is mentioned about impact of the cruelty of management to the pubbacks nor legal management's demoralizing behavior. This all occurs over the week of 6-1-92. There are whispers throughout the legal department that management is searching various persons computer contents to see if they are the author of the "walchdog." Jackie is told by other lawyers that RTC department heads are permitted to secretly access any employee's computer. At the staff meeting, the Western Region Senior Attorney (who has just been promoted to AGC) announces his resignation from the RTC, effective 6-30. His deputy becomes the acting AGC until July 1992, when she becomes the AGC in charge of the Denver RTC Legal Department.</p>	Slander	<p>Harrasment Retaliation Unauthorized Computer Entrance</p>
6/2/92	<p>Jackie EEO counsellor is to be in Denver to interview witnesses in connection with her informal EEO action. Witnesses include all members of the Denver legal transition team and the Deputy who is Jackie's section chief.</p>	EEO	Whistleblowing
6/4/92	<p>Deputy holds a meeting with us to discuss changes affecting the pubbacks' special projects unit. An emotional discussion is held regarding comments made to a Denver FDIC legal manager and repeated by him to members of the pubback group. An RTC paralegal (who reports to a Transition Team manager) told him that the pubbacks were all troublemakers and incompetent. Most of the pubbacks were hoping to return to the Denver FDIC, if any jobs became available. The Deputy tells the pubbacks that he has checked with the Transition Team manager who denies that the comments were made. The Deputy states that he did not check with the FDIC manager. The Deputy then proceeds to slander the FDIC Section Chief's veracity and competence. This same day the Deputy tells Jackie and Bruce that management is opening all their mail, reading it and directing it to other lawyers. Jackie objects and asks to receive her mail unopened. At first her refuses to promise Jackie that she will receive ANY mail addressed to her. She reminds the Deputy of her EEO action. He tells her that she has no right to any mail delivered to the RTC (irrespective of to whom it is addressed and thus the EEO mail should be delivered to her at home). She states EEO mail is official RTC business. He relents a bit stating she will be allowed to receive private mail addressed to her but he refuses to let her receive any mail until it has been opened by management. He will check with the acting AGC, however, about letting Jackie receive her EEO mail unopened. Presently no mail is being delivered.</p>	Harrasment	<p>EEO, Retaliation Mail Slander</p>

Date	Description	Category	Cross-Reference
6/4/92	Deputy is promoted to Senior Counsel and no longer will be the special projects groups' section chief. Another putback will perform the general administrative duties. The Managing Attorney (now called a Senior Counsel) will be the section chief but he is in another building. He never comes to Republic (or later Arco) to meet with the putbacks collectively.	Harrassment	Retaliation
6/8/92	The PLS Class Action Grievance and Bruce's personal grievance are summarily denied by Western Region Senior Counsel without anyone from the RTC discussing the matter with Bruce or Jackie.	Grievance	Retaliation, Harrassment
6/11/92	Putbacks pack up their offices to move to Arco Tower. Again, they will be the only legal personnel in that building. The offices are extremely small and the floor is crowded with RTC contractors. Bruce is not given enough file drawers to unpack all he files so they stay in boxes piled in his office. When this move was announced, we asked to have the telephone directory changed to show our new location and telephone numbers, to have the computer system functional, to have all of our computer files transferred, and to have our email addresses correct so that we will receive information sent to us. This does not happen. When we arrive at the new building telephones are missing from the offices. When we do receive telephones, they are older models with single incoming lines. There is no voice mail for leaving messages. The phones do not have operational speakers. The rest of the legal division have standard business telephones with these features. The putbacks' telephones roll to empty offices or offices not occupied by legal. After as many as 12 rings incoming calls might roll to the receptionist's desk on another floor. Many computers are missing from the offices. Telephone directories and computer directories do not identify us as located in Arco. No one can get through to us and those that are persistent enough to finally get through to the building are frequently told we don't work there.	Harrassment	Retaliation, Telephones
6/11/92	All RTC employees had been required to complete forms which indicated their preferences for job locations within the RTC. These location preference sheets for RTC locations and file copies of SF-171's are sent to FDIC for job assignment purposes. We are not given the opportunity to update SF-171s or clarify geographical preferences based upon location of FDIC offices. RTC does not tell us that these items are sent to the FDIC. We find out about this when FDIC personnel start quoting from these documents in job discussions. While there are numerous open positions, management maintains that we cannot be considered for any open RTC slots. There are no rosters being required for open RTC legal department slots. Managers are either lateralled into an unposted slot or appointed as "Acting" managers. The RTC is advertising to fill some of the slots vacated by the putbacks. There are new slots vacant in the specific areas from which some of the putbacks have been removed.	Harrassment	Retaliation

Date	Description	Category	Cross-Reference
6/1/92	When Jackie makes a trip to the legal department to determine the status of her missing EEO mail. Deputy tells her she can receive all mail marked "Personal and Confidential" unopened. She renews request to receive all mail addressed to her. He denies the request to receive all mail. She continues to receive mail marked personal and confidential already opened and usually a week or more after the postmark on the envelope. This continues to cause problems with EEO timetable compliance.	Mail	EEO, Retaliation, Harrassment
6/16/92	Acting Senior Counsel responsible for administrative matters states Bruce and Jackie will be allowed to receive mail marked "personal and confidential" unopened. All other mail to us will be given to the new PLS Section Chief for him to open and route. Mail marked "personal and confidential" continues to be opened by others and delivered many days after receipt by someone in the RTC. Bruce and Jackie are told by persons outside the RTC of mail sent to them, but which Bruce and Jackie never receive.	Mail	Mail, Retaliation
6/16/92	PLS secretary checks the in-basket for new PLS section chief. Jackie's missing EEO mail is found in the PLS Section Chief's in-basket. Contrary to managements' promises, it is opened even though it is marked "Personal and Confidential". Secretary contacts Jackie about the mail. Jackie asks secretary to send an email listing all mail of a personal nature addressed to Jackie which was found in the section chief's office. Jackie then picks up her personal mail. Some of it is over a month old.	Mail	EEO, Retaliation, Harrassment
6/16/92	Jackie and Bruce ask OIG to investigate unauthorized mail opening and routing. Specifically opening of Jackie's EEO mail marked personal and confidential. They meet with OIG later in the week. OIG agrees to talk to Legal Management if they can disclose Jackie's identity. She agrees. OIG advises Jackie also to contact RTC EEO about this which Jackie does. EEO does nothing to prevent the unauthorized opening of Jackie's EEO mail.	Whistleblowing	EEO, Mail, Retaliation, Harrassment
6/17/92	Jackie and Bruce write to Legal Management demanding their privacy rights be protected, objecting to mail treatment, etc. Their communications are never acknowledged.	Mail	Harrassment, Retaliation
6/17/92	Telephone problems continue. Callers must wait at least twelve rings before they can get someone to answer if we are on the phone or away from our desks. Further, two of our three secretaries (who provide some phone coverage as well as secretarial support) continue to be required to be away from our location for days at a time at the legal department working on other special projects they have been assigned. People question why clericals are being putback because their services are no longer needed by the RTC, yet are required to work overtime to complete clerical projects.	Harrassment	Telephones, Retaliation

Date	Description	Category	Cross-Reference
6/18/92	A trade journal article slanders the PLS putbacks as "incompetent, deadwood and unaggressive." The source is reported to be an RTC outside counsel. The rumor is that the comments were made by an ex-RTC legal manager employed by RTC outside counsel. We are hearing from multiple sources within and outside the RTC that legal management is referring to us as "M & M's--misfits and malcontents." Negative publicity and congressional questioning about the reorganization is increasing.	Retaliation	Slander, Whistleblowing, Harassment
6/19/92	The PLS secretary is called before management and told she is to be immediately resigned out of the PLS. Management states this is being done because the secretary had previously worked for Jackie, had given Jackie her EEO mail marked personal and confidential, and because Jackie had filed several actions against the RTC and therefore the secretary had a conflict of interest. The secretary returns to her desk and resigns from the RTC without another job. She was the only secretary for the 9 PLS lawyers and 2 PLS paralegals. She had been regularly working until 11 p.m. without any kind of overtime compensation. Shortly thereafter, Jackie initiates her second informal EEO action based upon retaliation, in part for this event.	EEO	Retaliation, Harassment, Mail Whistleblowing
6/19/92	Jackie and Bruce prepare a set of questions in connection with their pending grievances. They ask the RTC to answer the questions to facilitate settling the grievance at this informal stage before it leaves the agency. The questions go unanswered.	Grievance	Retaliation, Harassment
6/22/92	Step Two Class Action Grievance Appeal and step two personal grievance (Bruce's) are filed with legal officials in RTC/Washington, D.C.	Whistleblowing	Grievance
6/22/92	Jackie receives notice that her pending EEO complaints cannot be informally resolved. She must file a formal complaint.	EEO	Harassment Retaliation
6/23/92	Denver legal administrative unit requests current copies of Bruce and Jackie's SF-171s and performance appraisals. At first they do not want to tell us why. Then admit that the GAO has requested these. Bruce and Jackie had previously met with members of the GAO to explain PLS matters and PLS concerns arising from the reorganization.	Whistleblowing	Harassment Retaliation
6/24/92	Managing Attorney (now the Senior Counsel) is new manager of the putback unit. Putback secretaries are reassigned to RTC legal. We no longer have secretarial support at our building nor telephone backup. We are assigned new secretaries in other buildings to do our typing. Senior Counsel requires putbacks to contact him through his paralegal because he "is very busy and must manage his time carefully." We are the only RTC lawyers who are required to approach their supervisor through a paralegal rather than directly.	Harassment	Retaliation, Telephones

Date	Description	Category	Cross-Reference
6/24/92	Jackie calls EEO counselor regarding status of EEO notification from which Jackie's appeal timing is determined. EEO counselor had sent them to Jackie's office one week ago by certified mail marked Personal and Confidential. Jackie had not received them when she called. Jackie writes legal management to request delivery of the certified mailing and to renew her objections to mail procedures. Later in the week legal department delivers the missing certified mail. Its postmark is from when the EEO sent it. It has been opened before delivery to Jackie.	EEO	Mail, Retaliation Harassment
6/24/92	Jackie contacts EEO counselor for help determining EEO appeal rights (her requested relief and resolution was denied by local Legal Department and now Jackie must appeal to EEO/RTC Washington, D.C. Office). Mail interference has made it impossible to determine timing issues related to appeal.	EEO	Retaliation, Mail, Harassment
6/25/92	Manager of administrative unit responds to Jackie's most recent mail complaint. His records show a certified mailing to Jackie was received on June 15, 1992. Jackie never receives this mailing. EEO records show that they sent Jackie a certified mailing on June 17, 1992. Legal records apparently do not show receipt of this certified mail. On June 29, 1992 Jackie receives the EEO mailing of June 17th, but never resolves the issue of what was received but not delivered to her on June 15. She also objects to managements' treatment of a letter from the FDIC about a New York FDIC job opportunity which arrived on her desk opened and stale.	Mail	EEO, Retaliation Harassment
6/25/92	When ARCO administrative unit complains, Senior Counsel emails putbacks regarding telephone problems. He indicates the problem is because putback lawyers are not answering their telephones. He makes this allegation in spite of the numerous emails and complaints he has received from the putbacks regarding the impossibility of telephone coverage without proper equipment, clerical support or backup. Several Putbacks, including Bruce, write to Senior Counsel regarding basis for and resolution of the problem. Senior Counsel thanks one for his input, is silent as to the other putback's suggestions, and calls Bruce "uncivil and unprofessional."	Retaliation	Telephones, Harassment Slander
6/26/92	RTC initiates client responsiveness program to address numerous complaints nationwide. It requires that there ALWAYS be coverage of telephones during normal business hours, telephone calls must be returned within one day, mail requests are to be responded to within 15 days, even RTC employee requests for information are to be responded to within PRESCRIBED time frames and standards to insure timely and accurate responses are to be set. The putback unit cannot comply with the directive since they have no means to comply. Legal department management refuses to comply with this directive when it comes to requests for information and support by Bruce and Jackie.	Directives	Mail, Telephones Harassment Retaliation

Date	Description	Category	Cross-Reference
6/30/92	Jackie initiates a second informal EEO action based upon grounds of retaliation. Jackie's complaints include Management's reassignment of the PLS secretary and opening, reading and routing to others Jackie's mail marked personal and confidential.	EEO	Mail, Harassment Retaliation
6/30/92	Senior Counsel gives Bruce and Jackie the assignment of preparing PLS closeout memos on cases with expired statutes of limitations. This is make work that normally would be done by a paralegal.	Retaliation	Harassment
6/30/92	Computer and telephone problems continue unabated. People in Washington, D.C. RTC tell Bruce they cannot find him listed on the email system. When PLS attorney Ginny McCrae has a heart attack on 7-2-92, Jackie's former PLS paralegal cannot get through to her by telephone. Later, Jackie's EEO counsellor tells her that she has been unable to get to someone to leave a message. Either the phone rings and rings or the person calling gets a busy signal (which should not occur if the phone is ringing through a coverage path). Mail continues to be a problem for Bruce and Jackie.	Harassment	Computers, Retaliation Mail, Telephones EEO
7/2/92	PLS attorney Ginny McCrae has a heart attack and is taken to the hospital in critical condition. PLS Section Chief calls Jackie and asks her if work stress caused Ginny's heart attack. Jackie says she does not know, she is neither a doctor nor a psychologist. The next week the Denver PLS Section Chief calls PLS management in DC and tells them Jackie said work stress and the Denver PLS Section Chief caused Ginny's death. Jackie hears about the comments from another attorney in Atlanta where the Denver PLS Section Chief's comments had been repeated. Jackie writes a PLS official in DC to deny the comments.	Retaliation	Slander, Harassment
7/6/92	Jackie files a formal EEO complaint with the RTC, Washington EEO Office.	EEO	Retaliation, Harassment
7/7/92	PLS Section Chief is interviewed by Jackie's EEO counsellor regarding the reassignment and subsequent resignation of the former PLS secretary. When questioned about the reasons for her reassignment the PLS Section Chief mentions that "some insiders have been leaking information regarding the Denver legal department to OIG and the press. Over the next week multiple managers are interviewed. Legal managers are consistent in referring to a mysterious mail directive they are following but the directive cannot be found in the directives computer base by the EEO nor is it found and given to the EEO counsellor as she requests. Management suggest they reassigned the secretary because she told them felt uncomfortable about the PLS situation. She denies this and said she resigned because they questioned her integrity. Further they had told her that one of the reasons she was being reassigned is that Jackie had actions against management.	EEO	Retaliation, Harassment

Date	Description	Category	Cross-Reference
7/10/92	Putbacks had been allowed up to four hours every pay period to work on their SF-171s, job hunt, etc. Neither Bruce nor Jackie had requested this type of leave until Jackie did during this pay period. It was approved once. On 7-15-92 Denver removed the right to seek such administrative leave in most cases, including those applying to Jackie and Bruce.	Harassment	Leave time
7/11/92	EEO counselor continues to have difficulty each time she seeks to interview legal management regarding Jackie's EEO complaints. During first informal complaint Deputy was never available. This time the manager of the legal administrative unit is hard to interview.	EEO	Retaliation, Harassment
7/16/92	Putbacks learn that they will be returned to the RTC when CEO Casey tells the press that the putback of employees to FDIC from RTC Legal is being rethought based on the need for more employees in RTC. They are not officially told of this by the RTC until the following week. There is speculation about how return to RTC will affect putbacks--will they be reinstated in the same or similar positions from which they were removed? What if they now prefer (or are interviewing for) FDIC jobs? Jackie and Bruce both are under consideration for the Denver FDIC/PLS Section Chief slot. Jackie and Bruce are told that the reversal of the putback was partly precipitated by the intense scrutiny of the reorganization process by GAO, press and Congress, as well as strong resistance within the FDIC to the putback process.	Announcement	Retaliation, whistleblowing
7/16/92	FDIC attempts to reach Jackie at RTC to offer her the job of Denver FDIC/PLS Section Chief. They are told Jackie does not work in RTC office they have reached and this office does not have a number to forward call to Jackie.	Harassment	Retaliation, Jobs, Telephones
7/17/92	Bruce and Jackie meet with GAO all day to brief them on issues related to the PLS reorganization.	Whistleblowing	
7/17/92	Jackie calls FDIC and accepts the job late Friday when she returns from an all day GAO briefing. She is told that even though it is late in the day, the paper work appointing her to that position will be cut and sent to Washington that same day because the roster for the position expires Monday. Jackie is told FDIC will get back to her with details and instructions on Monday, July 20. FDIC does not call on Monday.	Harassment	Retaliation, Jobs
7/20/92	Jackie issued notice that informal procedures cannot resolve EEO complaint. Her next step is to file a formal complaint with RTC EEO office.	EEO	Retaliation, Harassment
7/20/92	GAO attorneys in all week interviewing PLS and other legal staff. Jackie and Bruce are interviewed. Jackie and Bruce give GAO names of several PLS attorneys in other offices as witnesses and then emails those attorneys. GAO sets up interviews in other PLS units. RTC is notified of these continuing investigations.	Whistleblowing	

Date	Description	Category	Cross-Reference
7/21/92	PLS Section Chief wants to know when he will get closeout memo he claims were due from Bruce and Jackie the previous week. Jackie and Bruce have not been given necessary information to complete the closeouts even though they have asked the PLS Section Chief for this information. The deadline he demands was never communicated or discussed. It is an unrealistic deadline under the circumstances. We have no PLS files, no regular secretary, no information on present format or content required to document closeouts, etc.	Retaliation	Harrasment
7/22/92	FDIC calls to tell Jackie's her job offer is in limbo. They are not sure if she can have the Denver FDIC job because of RTC's reinstatement of putbacks to RTC. Jackie protests that she wants the FDIC job. They promise to keep her informed of circumstances surrounding the job offer accepted by her. Jackie does not hear from FDIC again until the fall, when she receives a form letter saying they appointed someone else. No one from FDIC ever explains to Jackie what has happened. Unofficially, Jackie learns that during July an FDIC employee was given the job. Certain RTC managers try to help Jackie retain the FDIC job, but to no avail. Jackie is told that the RTC General Counsel is very upset with all the criticisms of the putback process and won't do anything to correct her situation. The RTC legal management knows that a family emergency bars Jackie from moving at this time. Jackie had previously disclosed the emergency to Denver legal management. Jackie and Bruce hear unofficially that they will be offered a position in Kansas City as a PLS line attorney. As management knows, Jackie will be forced to refuse the offer and will lose all employment rights with FDIC and RTC.	Retaliation	Harrasment, Jobs
7/22/92	CEO Casey officially informs RTC staff that the putback to the FDIC has been rescinded. Unless a job offer from FDIC has already been accepted, RTC putbacks cannot go back to the FDIC. The rescission is effective July 10 even though it was not announced to the field and to putbacks until July 22. This results in Jackie losing the FDIC Denver PLS Section Chief slot she was offered and had accepted. Putbacks are to be informed of RTC location and job to which they will be reassigned. They will have two weeks to decide whether or not to accept the reassignment (even if it requires a move) or lose all employment rights with FDIC and RTC.	Harrasment	Retaliation, Announcement
7/22/92	Deadline for RCT's responses to Step Two Class Action Grievance and Bruce's Personal Grievance appeals arrives without an response by the RTC. Step Three PLS Class Action Grievance and Bruce's Personal Grievance are filed with the RTC.	Grievance	Whistleblowing
7/31/92	Press reports that House Banking Committee will hold hearings to investigate the PLS reorganization. Casey and Abboussie each testified before the House Banking Committee on Wednesday, July 29, about RTC problems.	Announcement	

Date	Description	Category	Cross-Reference
8/3/92	Jackie files second formal EEO complaint based upon retaliation by RTC management	EEO	Retaliation, Harrassment, Whistleblowing
8/4/92	Kansas PLS receives Bruce and Jackie's reassignment notices late afternoon on Tuesday. Kansas emails us with the information. We have until Friday, August 7, to respond to the RTC about whether or not we will move to Kansas. This is three days notice. Throughout the RTC, only a select group of PLS putbacks are being geographically reassigned. Every other legal putback in the Denver office is returning to the Denver office. Only Bruce and Jackie will be forced to move or lose all employment rights with FDIC and RTC. The move is being forced upon them even though there are approximately 16 open attorney slots in the Denver RTC office for which both Jackie and Bruce are qualified. Jackie emails management asking how to be considered for Denver jobs and what rules govern selection. These questions have all been asked multiple times before. The inquiries are neither acknowledged or unanswered.	Retaliation	Jobs, Harrassment
8/5/92	On August 11, 1992, Senate Banking Committee will hold hearings on the PLS reorganization. Bruce and Jackie are to attend as witnesses. Jackie, Bruce, and RTC are notified of Jackie's and Bruce's attendance at the upcoming hearing.	Announcement	Whistleblowing
8/5/92	Mail and telephone problems continue. Bruce and Jackie don't receive notices of reassignment sent to them in overnight mail by Kansas PLS. The notices require a response by Friday whether or not Bruce and Jackie will move to Kansas. That is only 48 hours away. They have not seen the exact wording of the reassignment notice and this is necessary in order to decide whether to move. Bruce and Jackie are preoccupied with the task of preparing testimony for the Senate Banking Committee. Denver legal finally admits receipt of the notices and emails Bruce and Jackie that someone will deliver the notice to Bruce and Jackie after working hours on Wednesday night. Jackie and Bruce are told Denver legal had made unsuccessful to reach them by telephone. Both Bruce and Jackie had been at their desks preparing Senate testimony until after midnight.	Harrassment	Retaliation, Mail, Jobs Telephone
8/6/92	Step Three PLS Class Action Grievance is denied on procedural ground that the Grievance Procedure does not provide for a class action grievance. A decision on Bruce's Personal Grievance is never issued. Jackie is not sent a notice of denial despite the fact that she is a named Grievant. She finally receives official notice when Bruce tells RTC that Jackie is not receiving notice. She gets a summary denial on 9-1-92.	Grievance	Retaliation
8/7/92	Jackie's former PLS paralegal quits RTC. She tells Jackie that one of the reasons she left is because the paralegal is tired of hearing Denver legal managers (especially PLS manager) and one male PLS attorney constantly disparage Bruce and Jackie and call Jackie profane and slanderous names.	Slander	Harrassment Retaliation

Date	Description	Category	Cross-Reference
8/7/92	Reassignment notice deadlines are extended until Friday August 14, 1992, which is three days after the Senate hearing at which Bruce and Jackie are to testify. This gives Bruce and Jackie one extra week to decide whether or not to move to Kansas. Later the deadline is extended until Monday August 17, 1992.	Retaliation	Jobs
8/11/92	Senate Banking Committee hearings on PLS reorganization are held. Bruce, Jackie and Brad Smolkin testify. Chairman Riegle strongly admonishes the RTC not to retaliate against Bruce, Jackie and Brad. He reminds RTC of CEO Casey's and FDIC Chairman William Taylor's similar promises not to allow retaliation. Significant press coverage follows hearing. Press is unfavorable to the RTC. Jerry Jacobs, RTC General Counsel receives public criticism after the hearing about his management of RTC legal and his potential conflicts of interest.	Whistleblowing	
8/14/92	Jackie and Bruce are the only people left in the special projects unit. They are not returned to the legal department even though that completely isolates them from their peers. All other putbacks have returned to the legal department leaving Bruce and Jackie as the only two legal employees in the ARCO Building. Bruce and Jackie have no clerical help of any kind. There are no mail runs from the legal department to deliver mail or RTC circulars.	Retaliation	Mail, Harrassment
8/14/92	Jackie and Bruce return to Denver after testifying. Local rank and file treat them very well. Bruce and Jackie get a written memo from a senior RTC legal manager indefinitely extending the relocation/reassignment deadline. The indefinite extension is at the request of the Senate Banking Committee who seek to have Jackie and Bruce readily available until the Senate's investigation of the PLS reorganization is complete. The memo also notifies Bruce and Jackie that they may elect to stay in a non-PLS staff attorney slot in Denver when they make an election under the reassignment.	Whistleblowing	Jobs
8/15/92	Jackie asks legal management for guidance on how to handle the many telephone calls she is receiving in response to the August 11 hearing and the press coverage. AGC directs Jackie to a citizen responsiveness circular issued by CEO Casey.	Retaliation	Harrassment

Date	Description	Category	Cross-Reference
8/17/92	<p>Bruce and Jackie visit RTC legal department to turn in travel reimbursement paperwork. Senior Counsel's secretary tells them Senior Counsel needs to see them immediately. Senior Counsel berates them with "What are you doing in this building?". He is very hostile. They explain their presence in the legal department (even though they are still members of the legal department who have a need and right to be present in the legal department). Senior Counsel demands Bruce or Jackie notify him in advance and seek his permission before they come to the legal department. Further, he demands they let him inspect any and all documents they take from the legal department. Jackie asks him to put his requirements in writing. He agrees. Jackie and Bruce return to the Alco Building. He emails Bruce and Jackie with his demands but makes it sound as if this was a gentle request. Jackie sends him her characterization of the meeting and asks several questions regarding how to comply with these restrictions. Jackie copies senior RTC management (including the acting general counsel and CEO Casey) so that they are aware Denver legal management is breaking CEO Casey's and FDIC William Taylor's promise to the Senate not to retaliate against Bruce and Jackie. This behavior also ignores Senator Riegle's admonishment to the RTC at the hearing not to retaliate against or target Bruce and Jackie after their testimony. Also, legal management requires Jackie and Bruce to take annual leave for time spent with their Washington attorneys preparing their testimony for the hearing. On August 19, Senior Counsel informs Bruce and Jackie he is no longer their supervisor. The AGC will now perform those responsibilities.</p>	Retaliation	Harassment
8/18/92	<p>Denver OIG contacts Bruce and Jackie and sets up a series of intense interviews requiring them to substantiate in detail all their comments at the Senate hearing and to provide any written proof</p>	Whistleblowing	Retaliation Harassment

Date	Description	Category	Cross-Reference
8/18/92	Jackie gets telephone call from a Denver lawyer who had tried to reach her several times. When the lawyer told person answering the telephone that the lawyer did not need to leave Jackie a message, the person answering said "Great. I won't have so much work because I need to write messages for Jackie and then keep a separate list for someone else." Jackie writes management objecting and is told this is not going on. She also objects to OIG. Meanwhile, telephone problems keep occurring. Daily people from outside the RTC tell Bruce and Jackie about their unsuccessful attempts to reach them by telephone. The callers (including members of Jackie's family) are told we don't work for the RTC, that the person answering the telephone has never heard of us, that we are not there, or the phone just rings and rings and never is answered. One prominent Denver lawyer is so frustrated at the run around he is given that when he finally gets to Jackie he apologizes to her for any repercussions she might receive due to the uncustionary profanity he used when talking to the various RTC personnel who answered the many telephones at which his calls ended up. Mail delivery is still a problem and sporadic at best.	Retaliation	Harrasment telephones, EEO, mail
8/18/92	General Counsel Jerry Jacobs resigns from RTC after much public criticism. Abboussie becomes Acting General Counsel. The legal reporting lines in the field are changed. Henceforth, AGC's in the field will report to field Vice Presidents.	Whistleblowing	
8/20/92	Legal Management is harassing perceived supporters of Bruce, Jackie and Brad Smolkin (who also testified). Management is harassing the ex-PLS Section Chief from Atlanta. A Denver PLS line attorney has been told to pick sides, she is either friends with Bruce and Jackie or she is part of the PLS PLS lawyers in California. Friends with Bruce and Jackie are afraid to be seen with us. Several RTC friends will only go to lunch with us if we can go somewhere distant where no one from the RTC will see us together. They all explain they are afraid of legal management's retaliation for being friends with us. Some have been threatened directly and indirectly with their jobs. Other RTC employees call us to tell us facts related to the reorganization or give us documents they think are important, but these people insist upon meeting us at odd times in out of the way places. Jackie is warned about this time that management is keeping very close track of all Bruce and Jackie's telephone calls in order to find out who are their friends and supporters. Some RTC friends will only call Bruce and Jackie at home.	Retaliation	Harrasment
8/21/92	Four of the open Denver section chief jobs are finally posted. These are only those jobs into which no one "lateraled" during the reorganization. These slots are either empty or they have acting managers who have never before been RTC managers. Bruce and Jackie post for these jobs, make the roster, interview, but are passed over in favor of others with much less experience.	Retaliation	Harrasment, Jobs
8/25/92	Jackie and Bruce submit FOIA request to the RTC regarding the PLS reorganization.	FOIA	

Date	Description	Category	Cross-Reference
8/26/92	RTC issues a new directive regarding employees of offices which are closing. RTC will offer jobs to these employees in the same location they are presently in or the nearest location of an RTC supercite. This directive would have prevented legal management from trying to ship Bruce and Jackie (and other PLS putbacks) to remote offices on little or no notice.	Directives	
8/26/92	Mail problems again. The Senate sent Bruce and Jackie copies of their oral testimony to correct as needed. It was sent in a fringed envelope on August 12, 1992 and it is to be returned to the Senate by August 28. Bruce is on vacation when it is finally delivered to their offices on August 28, opened and apparently routed to others before being delivered to Bruce and Jackie.	Retaliation	Mail, harassment. EEO
8/27/92	Acting General Counsel issues directive to legal department to cooperate with the OIG. This is the first time anything like that has been issued since Jackie has been with RTC. Earlier, in January when her office was broken into the Managing Attorney/Senior Counsel had told her not to inform the OIG.	Directives	
9/3/92	GAO, OIG, the Senate Banking Committee, members of Congress and press are all asking for information from the RTC about RTC's legal programs and the reorganization. This is creating severe hostility on the part of legal department management in Denver and in Washington. RTC staff is having to meet the deadlines and perform the work involved in responding to the requests. Jackie and Bruce are told that frequently management blames them and makes disparaging remarks to RTC staff whenever someone notes the work involved. At this time the legal staff is preparing its voluminous Staff Report to be used at the 10-1-92 hearing. This also creates work for staff. Supporters and friends of Bruce and Jackie are becoming very afraid. Jackie and Bruce are frequently told that this is the basis for many employees' refusal to be seen in public in the day with Bruce and Jackie. They are completely isolated at within the RTC.	Whistleblowing	Retaliation, Harassment.
9/3/92	Jackie attempts to initiate good faith settlement negotiations related to her pending grievances and EEO actions. She inquires about the standards for lateralizing into management slots versus posting for slots that have been announced. The AGC acknowledges this memo and says she will look into the issues raised. Jackie never receives another communication from RTC management responsive to her questions, overtures, etc. The AGC instead asks questions about telephones. Again on September 9, Jackie writes to the AGC to inform her about the continuing telephone issues which never seem to get corrected. Again on September 24, 1992 Jackie reminds RTC management of her settlement overtures and the fact that no one at RTC has responded to these nor answered her questions. She receives no response of any kind to this email.	Retaliation	Harassment. EEO Telephones, Jobs

Date	Description	Category	Cross-Reference
9/3/92	Telephone problems continue. We continue to notify management who continues to express helplessness, confusion, blame it on others or give us promises to fix the situation which are never kept. Mail problems continue. We never receive the normal RTC internal mail discussing programs, training directives, etc.	Retaliation	Harrassment, Telephones, Mail
9/3/92	Jackie receives multiple emergency telephone calls at ARCO while Jackie is doing necessary errands in legal department building. Her daughter has been admitted to the hospital. Several of Jackie's family members attempt to reach Jackie with multiple calls placed to her office. Family members who have called more than one time later comment that different people appear to be receiving the emergency calls. All callers are given a run around. One family member is so frustrated that she bursts into tears and begs whomever answered the telephone to please get assistance to locate Jackie. Jackie is easily located in the legal department, but no one makes the effort to find her. Bruce and Jackie still have no legal support staff nor telephone coverage to assist them, no one to take the time to help locate Jackie in a situation such as this. When she tells business/administrative personnel in her building about the problem and the missed emergency telephone calls, she is told that ARCO personnel no longer want to answer Jackie or Bruce's telephone since they are receiving so much abuse from upper management over telephones. Jackie bursts into tears. The administrative manager she is talking to becomes friendly and explains that senior management harasses the support staff and then blames Bruce and Jackie for the abuse. Jackie and Bruce discuss it with the receptionist and various business support staff at ARCO (as well the office manager). This is first time Bruce and Jackie have heard about all the harassment directed at these non legal personnel. The telephone problems continue (as do mail problems). Many of the business staff, contractors, and Bruce and Jackie, however, become friendly, thus relieving some of the isolation inflicted by management. Jackie writes to legal management to again document the unreasonable, abusive, and retaliatory situation. There are no substantive remedies to the problems Jackie sets forth.	Retaliation	Mail, Harassment
9/9/92	Bruce writes to FOIA office inquiring when we will hear from them regarding our pending FOIA request. The FOIA office is over its statutory timeframe to respond. FOIA office responds on 9-10-92 that they have the right to not respond for some time (and most likely they will take more time).		FOIA

Date	Description	Category	Cross-Reference
9/9/92	Everyone is talking about how much effort the Legal Department is putting into discrediting Bruce. Jackie and Brad by any means. Legal Management is spending an enormous amount of time preparing a "Staff Report" for the upcoming hearing on October 1. During this time, Jackie and Bruce are told by lawyers from other RTC locations that legal management is requesting PLS lawyers to "certify" that they are not seeking jobs outside the RTC in order to "prove" that the new PLS is a happy productive unit. Even one PLS section chief jokes to lawyers in his section about what a farce such a certification is, since many of the PLS section chiefs are looking for jobs.	Retaliation	Harrasment
9/9/92	Jackie writes to EEO counselor requesting information about when she will hear from the EEO office on the counselor's report. That too should have been issued by this date. Jackie also inquires why the two heads of the RTC EEO offices do not appear in her email directory. This comes as a surprise to the EEO counselor.	EEO	Harrasment, Retaliation
9/9/92	Bruce asks Denver AGC if he or Jackie have been under any type of surveillance since 1-1-92. This request is prompted by all the questions and fears posed to Jackie and Bruce by people within and outside the RTC who had unusual experiences related to talking to Bruce or Jackie or in connection with information related to Bruce and Jackie. It is also prompted by all the problems Bruce and Jackie have experienced at the RTC since they testified. On 9-11-92 AGC responds that she is unaware of any surveillance but she cannot speak for others. Bruce and Jackie are told by a reporter that because of a FOIA the reporter had sent to the RTC and because of other information he had, Bruce and Jackie should be concerned that their telephones were bugged and their computers tapped.	Retaliation	Harrasment, telephones, Mail, Computers,
9/10/92	Telephones, mail and now fax machines continue as problems. Faxes to the Washington OIG from the fax machine by Bruce and Jackie's office do not arrive at the RTC even though Bruce receives confirmation of receipt. Bruce and Jackie continue to have computer problems with emails. Jackie's AWS work schedule is messed up because she does not receive the interoffice mail and circulars describing the program. Bruce's telephone continues to roll over to mysterious places when he is on the telephone or away from his desk.	Retaliation	Mail, Telephones, Harrasment, Leave time
9/10/92	AGC begins to pressure Bruce and Jackie for PLS closetout memos. The AGC does this despite the fact that since that assignment was given to Bruce and Jackie, they did not have access to enough information to complete the assignment, both had been continually busy working with OIG. GAO, testifying to the Senate, as well as taking necessary and approved leave time.	Retaliation	harrasment,

Date	Description	Category	Cross-Reference
9/11/92	Jackie is told by members of the Denver PLS unit that Legal Department management and one male PLS attorney are bragging about how Brad, Bruce and Jackie will be audited forever by the IRS. Jackie asks a mutual friend in Atlanta to warn Brad Smolkin of this most recent attack. The "shunning" by RTC personnel of Bruce and Jackie based upon fear continues. Reviews of Beatty-era lawyers loyal to Bruce are being redone by the new PLS management to "get rid of Beatty-era favoritism." This is occurring just as they are trying to discredit Bruce, Jackie and Brad Smolkin's prior testimony. These are reviews for which Bruce was the second line supervisor.	Retaliation	Harassment
9/12/92	Bruce and Jackie submit a FOIA request to the RTC regarding physical surveillance of Bruce and Jackie and their offices, work product, telephones etc. at the RTC.	Retaliation	FOIA, Harassment
9/15/92	Bruce applies to have 35 hours of annual leave that he forfeited reinstated. Bruce forfeited the annual leave because his PLS duties did not allow him to use the leave in the year it was earned. Now his supervisor of that era (John Beatty) is no longer with the RTC and hostile management has replaced Beatty. Bruce does not get a timely response to his request.	Retaliation	Harassment, Leave Time
9/21/92	Roof repairs are occurring at the Arco Tower. This results in noxious fumes accumulating on the 37th and 38th floor. For several days other RTC employees are getting sick and their RTC management is telling them to leave the building. Jackie gets migraine headaches from the fumes. Bruce and Jackie let Legal management know of the problem. They are told that they must take sick leave or annual leave or make up the time they are out of the building for this problem. The other RTC employees are not required to do this.	Retaliation	Harassment, Leave Time
9/22/92	The Denver ISU (computer services) unit sends out an email to all Denver RTC employees saying the email system is not equipped with any security or protection features so don't use the system to transmit or receive confidential information.	Directives	Computers, Unauthorized Use of Computers
9/22/92	RTC provides to Bruce and Jackie a \$3000 fee estimate to process their first FOIA request regarding the PLS reorganization. Letter demands advance payment of \$600.	FOIA	
9/23/92	RTC notifies Senate Banking Committee that Bruce and Jackie's reassignment election had been suspended indefinitely pending completion of the ongoing Senate investigation of the PLS reorganization.	Whistleblowing	
9/24/92	AGC informs Bruce and Jackie that the Senate has requested their presence at the October 1, 1992 hearing.	Whistleblowing	

Date	Description	Category	Cross-Reference
9/24/92	Jackie and Bruce are told they must use annual leave for anytime they spend in Washington with their attorneys preparing for the hearing. This is true even though the RTC is requiring the presence at the hearing of all PLS section chiefs from all RTC locations. Washington PLS officials tell the PLS section chiefs that since the "RTC strategists" require their presence at the hearing to show support of CEO Casey, PLS will now meet for undescribed purposes. But for the need of the strategists, there is no other reasonable business or legal purpose for their collective attendance in D.C. at taxpayers expense. While the PLS Section Chiefs are gathering in D.C. at taxpayers expense, Jackie also is required to forfeit a day of AWS leave that she had already worked the hours to earn in order to attend the hearing. Jackie has been told that Denver legal managers of Jackie's grade and higher routinely switch scheduled AWS days to an alternate dates when they are forced to work on a scheduled AWS day that management will not allow Jackie to do this.	Retaliation	Harassment, Leave Time
9/24/92	Jackie is told she must use annual or sick leave for the health problems and absences from the ARCO Building related to the lumes. This is true even though the rest of the RTC employees used paid administrative leave.	Retaliation	Harassment, Leave Time
9/24/92	Mail opening continues. Jackie writes to legal management to secure the mysterious directives on mail that legal uses to defend its actions but which no one in legal, EEO or the OIG can find. Jackie is never responded to regarding the directive or her questions and concerns.	Retaliation	Harassment Mail FEO
9/25/92	AGC emails Bruce and Jackie regarding multiple issues. She tells Bruce and Jackie that they cannot use RTC time to work on grievances. This seems unfair to them because individual managers grieved have been able to spend unlimited time to defend against grievances. They are told that only a minimal amount of time can be used on EEO matters and this time can be used for only two specified purposes. This is not what the EEO directives state. In all other circumstances, annual leave is to be taken. In the email, AGC repeats promises that have never been kept regarding unopened mail, telephone coverage and surveillance. She sets a very ambitious work schedule for Jackie and Bruce to commence and meet before they leave for the hearing. Finally she suggests that in the future, Jackie and Bruce have face to face meetings with her for problems rather than documenting them in writing. This seems unwise and impractical to Jackie and Bruce under the circumstances which includes a history of continual problems and issues related to Bruce and Jackie being in a separate building from ALL other legal department personnel including management.	Retaliation	

Date	Description	Category	Cross-Reference
9/29/92	Bruce asks to be told the decision on whether or not the RTC will reinstate his forfeited leave. He wants to know this prior to determining how much leave he will need to take in connection with attending the Senate hearing. He is first told that they will get back to him before the hearing. Then on this date he is told that they did not decide the issue because we had to leave for D.C. Jackie is asked to deliver this message to Bruce because for some unknown reason RTC has just changed the spelling of Bruce's name in the Email directory and according to the AGC even she could not get a message to him by computer.	Retaliation	Harassment Leave Time, Computers
10/1/92	Former PLS Section Chief in Atlanta resigns without another job due to intense harassment of her by RTC legal management. She believes that this harassment is primarily directed at her because of her support for Brad Smolkin (her former supervisor). Bruce and Jackie, her criticisms of the reorganization, legal management's dislike of her loyalty to the former PLS AGC Beatty, and her cooperation with various entities investigating the reorganization.	Retaliation	Harassment
10/1/92	Jackie and Bruce attend Senate Banking Committee Hearing at which RTC attempts to rebut Jackie, Bruce and Brad's prior testimony. CEO Casey denies all allegations made by Bruce, Jackie and Brad. CEO Casey testifies that Bruce, Jackie, Brad, and the pulbacks have been "humanely" treated.	Whistleblowing	
10/1/92	Ed Bradley's news magazine "Street Stories" airs a feature story on Jackie and Bruce and the PLS reorganization during prime time television viewing hours. Street Stories usually has about 10 million households as viewers.	Whistleblowing	

Date	Description	Category	Cross-Reference
10/2/92	Immediately upon returning to Denver from the Hearing, Bruce and Jackie receive an angry memo from the Denver PLS section chief. The PLS section chief demands that Jackie and Bruce identify the bases for and provide proof of statements made in circular distributed to the attendees at the 10-1-92 Senate hearing. The circular summarized the major points of Bruce and Jackie's previous testimony and used redacted documents to support certain allegations. The PLS section chief's demands mirror many similar questions previously answered by Bruce and Jackie in investigations already conducted by OIG and GAO. The PLS section chief's demands, however, are stated in a more hostile fashion and additionally require that the response be in writing. This is the first time anyone within the RTC legal management has inquired of Bruce or Jackie about the specifics of the cases and events to which Jackie, Bruce and Brad alluded in their testimony. In preparing its extensive staff report, no one in RTC legal management had asked Bruce or Jackie for details, despite the fact that RTC had several hundred cases Bruce and Jackie might have been discussing. Only after the RTC's formal testimony is presented before the Senate Banking Committee does RTC think to inquire about any details. Thus, it appears that this demand is an effort by the RTC to lay the groundwork for Bruce and Jackie's dismissal by the RTC. Further PLS file integrity has always been an issue Throughout the entire OIG, GAO and Congressional proceedings, Jackie would be aware of and refer to a document she knew was in the PLS files. Legal management would act as if it did not exist. When Jackie explained what the document was and either produced a copy herself or explained who outside the RTC Denver Legal Department also had such a document, the document would suddenly appear in the legal files. The explanation was that the item had "been misfiled" and was suddenly found.	Retaliation	Harassment.
10/2/92	Acting General Counsel gives written demand to Jackie and Bruce that they have until October 16, 1992 to elect to move to Kansas City as a PLS line attorney or stay in Denver as a non-PLS line attorney.	Retaliation	Harassment. Jobs
10/5/92	Neither Bruce nor Jackie are receiving copies of their signed time sheets even though they have repeatedly requested these. Since they are in a separate building without any support staff getting this type of administrative data is always a hassle. It is difficult to track leave time without this information. AGC institutes new requirements regarding Bruce and Jackie giving their daily work schedules to the administrative unit a week in advance, stating all times they will be out of the office (i.e. lunch periods, meetings, days off, etc.)	Retaliation	Harassment. Leave Time

Date	Description	Category	Cross-Reference
10/5/92	AGC Denver starts pressuring regarding the previous work assignments to Bruce and Jackie, as well as adding to their assignments the extensive demands from the PLS Denver Section Chief waiting for them upon their return from the Senate hearing of 10-1-92. Jackie and Bruce attempt to set up rational time frames to complete the time consuming, competing assignments since the legal management usually demands that Bruce and Jackie's work be done in a shorter time frame than is possible under the limitations imposed upon them (i.e. no consistent clerical help, lack of access to files, incomplete instructions, etc.)	Retaliation	
10/5/92	PLS management from D.C. sets up meeting with Bruce to convince him to accept the reorganization and take a PLS staff attorney slot in another location. No one from PLS management or RTC management talks to Jackie about her options even though Bruce reminds the managers who talks to him about not setting up similar meeting with Jackie	Retaliation	Harrasment
10/7/92	Bruce and Jackie request FOIA fee waiver as being in the public interest. They request joinder the Government Accountability Project as a correquester on their pending FOIA	FOIA	
10/7/92	Bruce and Jackie ask the Acting General Counsel several important and obvious questions regarding the cryptic reassignment memo requiring them to elect to either move to Kansas City as a PLS line attorney or stay in Denver as a non-PLS line attorney	Retaliation	Jobs, Harrasment
10/7/92	PLS Section Chief in Denver requires Bruce and Jackie to present to him for inspection all documents in their possession regarding their testimony and the Denver PLS unit's cases. Further he instructs them that the written statement he has previously demanded should be from memory and thus Bruce and Jackie of no need to consult PLS files not in their possession. They have been required to substantiate all allegations they made in testimony or press disclosures which relate in any way to the Denver PLS work. The purpose of these demands, according to the AGC and the PLS Section Chief, is so that legal management can take corrective action, if needed. It is clear from this memo that this is yet another investigation (with a scope and timing which is suspect under the circumstances) into the exact things the OIG is presently investigating and into those things the Congress is investigating. This is unique in that Bruce and Jackie have presented their evidence on these matters in three forums already (GAO, OIG and Congress) and the RTC (not Bruce and Jackie) controls all the files, cases, personnel and other evidence necessary to complete the investigation and take corrective action where needed. These newest demands made to Bruce and Jackie are redundant and merely for harassment.	Retaliation	Harrasment
10/7/92	OIG continues its intense scrutiny and investigation into all allegations made by Bruce, Jackie and Brad. They too are investigating the basis of the "Fact Sheet" for which the PLS Section Chief is demanding written and documentary evidence	Whistleblowing	

Date	Description	Category	Cross-Reference
10/7/92	In response to time frames and procedures suggested by Bruce and Jackie on how to comply with the demands related to the investigation commenced by the legal department into Bruce and Jackie's testimony and into the "Fact Sheet," AGC Denver disallows all Bruce and Jackie's suggestions for how and when they complete this project instead, she unilaterally sets unreasonable deadlines for them without any access to files, etc. Within the time frame set by the AGC for Bruce and Jackie to complete the project, there was a federal holiday and several vacation days previously scheduled and approved.	Retaliation	Harassment
10/8/92	Senate Banking Committee requests Bruce and Jackie to submit their written response to the RTC's oral and written testimony at the 10-1-92 hearing	Whistleblowing	
10/8/92	Senator Riegle and Senator Wirth write to the RTC to remind management of their promise to the Banking Committee not to retaliate against Bruce and Jackie. They question the motive's and necessity to again require Bruce and Jackie to accept reassignment upon short notice when in the prior month CEO Casey had affirmed to the Committee that those reassignment's had been suspended indefinitely pending the outcome of the Committee's, GAO's and OIG's investigations. Senator Riegle notes that the only major occurrence between that promise and the present reassignment requirement was the 10-1-92 hearing. He again requests the indefinite suspension of the reassignments and that the RTC refrain from interrogating Bruce and Jackie about their testimony. He suggests that the RTC leave the further questioning of Bruce and Jackie regarding their testimony to GAO, Congress and OIG.	Whistleblowing	Retaliation, Jobs
10/8/92	AGC Denver directs Jackie and Bruce's attention to directives regarding press and requires them to conform with those directives. Jackie points out to AGC that in August after returning from testifying before the Senate Committee, Jackie had asked AGC Denver about such requirements. At that time, AGC had told her to comply with a citizen responsiveness circular rather than the press directives now being cited. Further, because of Jackie and Bruce's lack of computer training on RTC data bases they were unaware of and had no access to the directives now being presented.	Retaliation	

Date	Description	Category	Cross-Reference
10/6/92	<p>Despite Senator Riegle's request to the RTC to refrain from interrogating Bruce and Jackie and despite the pending workload associated with supplying written testimony to Congress in response to the 10-1-92 Hearing, AGC Denver insists that Bruce and Jackie respond to the Denver PLS Section Chief's interrogations regarding their testimony and the "Fact Sheet". She only extends the deadline for completion of this project imposed by management on Bruce and Jackie an additional 4 calendar days (2 working days). The short extension is in light of the holiday and Jackie's scheduled vacation which occurs during this time. She further ignores extending the deadline in light of the time demands being imposed upon Bruce and Jackie in order to cooperate with the OIG investigation, even though the AGC had told Jackie and Bruce in writing to cooperate with the OIG. She is aware that this is presently taking up some of their work time.</p>	Retaliation	
10/9/92	<p>In response to being informed of the Senate's request for further written testimony from Bruce and Jackie, the Denver AGC says the "they" (implying the RTC rather than Bruce and Jackie) will work with the senate to get the information the Senate needs. She asks for details of the Senate request and directs Bruce and Jackie to continue to set as their first priority a written response to the PLS Section Chief's interrogations regarding their testimony.</p>	Retaliation	Harassment
10/9/92	<p>In an effort to comply with the recent instructions from AGC Denver regarding directives on press relations, Bruce and Jackie consult with the Denver Press Office on a request from an Arizona reporter to interview them. Denver passes the request on to the D.C. press secretary and he and the head of the PLS decide to instruct Bruce and Jackie to deny the interview.</p>	Retaliation	
10/9/92	<p>Jackie receives official notice from the FDIC that she was not selected for the Denver FDIC PLS section chief slot. The letter does not explain nor address why she was previously offered this job, which she accepted, and then it was summarily given to someone else.</p>	Retaliation	Harassment, Jobs
10/15/92	<p>Jackie writes to Acting General Counsel to remind him that on 10-7-92 she and Bruce had asked some basic questions which needed to be answered in order for them to be able to decide how to make the election required by the 10-16-92 reassignment demand which has a deadline for response the next day. She tells him that various senior managers in the PLS unit had met with Bruce and given Bruce some of the answers to their questions, but no one had discussed with Jackie any of these matters nor answered any of her questions.</p>	Retaliation	Harassment

Date	Description	Category	Cross-Reference
10/15/92	Jackie again writes to AGC Denver seeking the AGC's response to Jackie's 10-1-92 and 10-9-92 emails to the AGC. These emails addressed issues of prioritization of competing demands and reassessment of deadlines for all the pending projects being demanded of Bruce and Jackie, in light of the Senate's request for testimony by 11-2-92. She also informs the AGC about expected Senate materials being sent to Bruce and Jackie by mail and which they need in order to prepare their written testimony. This is done in the hope of avoiding another mysterious mail delay and resulting problems.	Retaliation	
10/15/92	AGC responds to the request for prioritization of work and amending of deadlines by telling Bruce and Jackie that they must respond to the PLS Section Chief's interrogations by 10-19-92 (two working days hence). She makes no mention of the Senate request or other issues raised by Jackie. Bruce also sends an email in response to this to attempt to clarify issues related to those pending projects and demands not addressed by the AGC. He also attempts to avoid what appears to be yet another non-delivery of mail issue related to the materials sent to him and Jackie by the Senate staffers.	Retaliation	Mail, Harassment
10/16/92	On the date by which Bruce and Jackie are required to make an election relative to reassignment, answers to their previously posed questions are delivered to them. This is the first time any of their many questions to the RTC concerning the reorganization, putback process, reassignment, grievance, and other questions have ever been responded to by the RTC. The answers also include an extension of the reassignment election date. They now have until November 2, 1992 (the original date their written responses are due to the Senate) to also decide on what their response to the reassignment election will be.	Retaliation	Jobs, Harassment
10/16/92	RTC Press Spokesman sends Bruce and Jackie a memo detailing how they are to handle press inquiries. This is in response to previous questions posed by them to the RTC press officer.	Directives	Retaliation, Harassment
10/16/92	Delay and non-delivery of mail continues as a problem. Despite the discussions with management and attempts by Bruce and Jackie to avoid mail problems, the information from the Senate that they need to assist them in writing their rebuttal to RTC's testimony is not delivered. It was sent out by the Senate on 10-7-92 but has not yet been delivered to Bruce and Jackie. Administration has helped resolve yet another recent mail problem, so Bruce emails them to thank them for this and asks their assistance on the new Senate mail problem.	Retaliation	Mail, Harassment

Date	Description	Category	Cross-Reference
10/19/92	Bruce and Jackie work all weekend and late into the nights in order to complete (within the unreasonable time frame insisted upon by the AGC) their written response to the PLS Section Chief's interrogations concerning the basis for their previous Senate testimony. The AGC and the Denver legal management know that all of the overtime they have imposed upon Bruce and Jackie by their unreasonable time deadlines will be uncompensated overtime, since issues related to overtime by Bruce and Jackie have been discussed multiple times in the past. As GG 15's Bruce and Jackie cannot receive overtime pay.	Retaliation	Harassment, Leave Time
10/19/92	PLS Section Chief tells Bruce and Jackie he intends to stop by their office on 10-20-92 and conduct his own physical inspection of the documents in their possession rather than have Bruce and Jackie inventory the documents and deliver them to his office. Jackie responds by emailing the PLS Section Chief that she and Bruce will not agree to this procedure. His continuing demands are unreasonable in light of the time expended in meeting the unreasonable requirements for written responses to his interrogations and the need to comply with the Senate request. She further denies him permission to search their files and invokes their right to privacy from unreasonable searches, based upon the fact that personal documents have been commingled with the RTC documents due to the hasty, last minute and frequent moves imposed upon Bruce and Jackie over the last number of months by the RTC.	Retaliation	Harassment
10/19/92	RTC FOIA branch denies fee waiver as not being in the public interest. They deny the ponder of the Government Accountability Project as a co-requestor. They restate their demand for prepayment \$800 on their \$3000 fee estimate.	FOIA	
10/20/92	Jackie and Bruce transmit their lengthy response to the PLS Section Chief's interrogations on the deadline date by computer. They use this method since Bruce and Jackie were not physically office with the rest of the legal department. They send the hard copy with exhibits (the exhibits were not in the computer data base so could not be transmitted by computer) by mail the next date. On the morning of 10-20-92 the PLS Section Chief already has sent an email regarding the lack of receipt of exhibits. Bruce immediately responds with the reasons.	Retaliation	Harassment
10/22/92	CEO Casey responds to Senator Wirth's and Senator Riegle's letters of 10-8-92 regarding reassignment and harassment of Bruce and Jackie. He cites the reassignment extension to 11-2-92 previously communicated to Bruce and Jackie and encloses the answers to their reassignment questions which they received on 10-16-92. He indicates that the RTC feels they are treating Bruce and Jackie in a favorable manner by allowing to transfer to Kansas City as PLS line attorneys. He makes no mention of the retaliation directed at Bruce and Jackie in the form of the unreasonable interrogations being pursued by the Denver PLS Section Chief nor does he mention the unfavorable office conditions which exist for Bruce and Jackie.	Retaliation	

Date	Description	Category	Cross-Reference
10/2/92	AGC Denver writes to Bruce and Jackie and tells them they have no expectation of privacy to any files in their offices. The AGC demands that they coordinate with the PLS Section Chief to permit him to conduct the physical review of Bruce and Jackie's offices. The AGC ignores the assertions by Bruce and Jackie of commingling of their private documents because of the forced moves. Bruce and Jackie do not respond to this email and the PLS Section Chief does not contact them again about the search.	Retaliation	Harassment Constitutional Rights
10/30/92	Shortly after attending the 10-1-92 hearing and the broadcast of the Street Stories television news magazine with the PLS story, Jackie had lunch with two RTC employees (one from the legal department and another from the business side of RTC). She was seen at lunch with these two employees by multiple legal department managers and ex-managers. During the month of October, the non-legal person was contacted at various times by the Denver PLS Manager, the ex-Denver AGC, other legal department managers and business managers threatening him with his job for being seen with Jackie. These RTC managers and ex-managers called Jackie derogatory names, questioned the RTC employee's loyalty and made other harassing comments. When Jackie first learned of these matters, she did not at that time go to the OIG with this information because the person involved was afraid of retaliation by RTC management. Later (when RTC personnel hope that the recent election would result in an Administration which would insist on protection from this type of retaliation or when the persons involved were just completely fed up with what was happening), Jackie and others went to the OIG and the EEO with the circumstances surrounding this retaliation and abuse of RTC employees. Shortly after the threats were made to the employee, certain of the RTC business management met with Bruce Pederson and told him he could have lunch with anyone he wanted. No one contacted Jackie and told her this even though management was aware that the threats and comments directed at the employee were in connection with a lunch with Jackie at which Bruce was not present. The non-legal employee was later told by his management that he could ignore the threats and have lunch with whomever he pleased. Several of the legal managers (when later questioned in connection with this incident) made the unbelievable and legally unsupportable statement that they made their comments to the non-legal employee because they feared breaches of attorney client privilege from the RTC employee to Jackie, an RTC attorney.	Retaliation	Threats to Employees
11/2/92	Bruce and Jackie notify Legal Management in Washington that they are making their election under protest regarding reassignment. Both elect to stay in Denver in non-PLS slots but specifically reserve their legal rights related to pursuing reinstatement in to their former positions or positions of equal status in the Denver legal department.	Retaliation	Harassment, jobs

Date	Description	Category	Cross-Reference
11/2/93	Mail censorship continues. Jackie receives a UPS letter marked "personal and confidential" in several places which has been opened before it is delivered to her. The letter clearly indicates that it is from a publisher's office.	Mail	Retaliation, Harrassment.
11/9/93	Jackie inquires about the status of the four Denver Section Chief jobs for which she had applied when she was told by friends in the legal department that these jobs had been posted. The administrative supervisor refuses to tell Jackie whether or not she had made the roster for these positions. Jackie also inquires about when another Senior Counsel position which is vacant will be posted. Again they tell her that they will not give her this information. She is told to ask the AGC all of her questions related to these positions.	Retaliation	Jobs, Harrassment
11/9/93	Jackie asks the AGC the same questions about job postings which the administrative unit refused to answer for Jackie. The AGC also will not answer these questions. The AGC refers Jackie to a person in the RTC Office of Human Resources in Washington, D.C. Jackie calls the person the AGC refers her to and that person expresses surprise that the AGC did not just answer the questions, since the AGC had the information immediately available to her and the OPM person had to research the questions and get back to Jackie. Jackie did find out that she had made the roster, the date the roster would expire, and the number of persons on the roster.	Retaliation	Jobs, Harrassment
11/9/93	The AGC Denver announces that a man who was an "Acting Senior Counsel" has been permanently appointed into that position as head of the Denver Legal Department Administrative Unit and also the Special Projects unit to which Bruce will later be assigned. Bruce and Jackie were unable to apply for this roster due to several factors. 1. they had no access to the day to day legal department discussions which inform employees of positions, 2. they had no computer training or knowledge of the computer bulletin boards upon which the jobs are posted, 3. they did not have regular access to the hardcopy job listing that appear on the legal department bulletin boards, 4. they had been heavily discouraged from appearing in the legal department and in one instance their supervisor had demanded he give them prior approval to come to the legal department (although this requirement was later rescinded), and 5. all mention of this position which appeared in general emails to legal staff and general mail circulars had neglect to be sent to Bruce in Jackie (as had customarily been the case). Jackie calls the Administrative Unit to determine how she can avoid missing any future Denver Legal postings and is told she can keep regularly searching the computer data base to see if anything has been posted.	Retaliation	Jobs, Harrassment

Date	Description	Category	Cross-Reference
11/12/92	Jackie and Bruce are told by email that ALL of the RTC employees and contractors in the ARCO Building in which Jackie and Bruce are located will be moving out of the building on 11-19-92. Jackie and Bruce will be the only employees left on two entire floors of the building. An office manager will occasionally be present in an office on the floor above Bruce and Jackie. They are told that if they want their telephones answered when they are away from their desks, they should forward their telephones to the Legal Receptionist in a building about 15 min. removed. They are told that if they are on the telephone and can't answer an incoming line (this is impossible for Bruce to do since his telephone is so old it doesn't permit two incoming lines) or if they fail to program it to the other building, the telephone will just roll to the empty receptionist's desk on another floor. Shortly before the scheduled move, a sympathetic business person tells her he will exchange Bruce and Jackie's obsolete telephones for newer models.	Retaliation	Telephones Harassment
11/12/92	Bruce and Jackie submit a fee waiver request to the FOIA office citing the basis for their exemption from the extensive FOIA fees and pre-payment requirements imposed by the RTC on their FOIA request.	Retaliation	FOIA Harassment
11/14/92	Bruce and Jackie file their extensive written testimony and voluminous exhibits with the Senate Banking Committee. This testimony rebuts the extensive testimony and Staff Report presented by the RTC at the 10-1-92 hearing. This has required an extensive amount of uncompensated overtime by Bruce and Jackie to complete	Whistleblowing	
11/17/92	Bruce and Jackie appeal the FOIA fee waiver denial and denial of joinder of the Government Accountability Project as a co-requestor. They explain why the fee waiver request is in the public interest and why joinder saves the RTC money and resources in responding to the request. Bruce and Jackie ask for recusal of the Acting General Counsel.	FOIA	

Date	Description	Category	Cross-Reference
11/18/92	<p>Jackie learns from persons in positions of authority in Washington D.C. that the Acting General Counsel of the RTC is making allegations about Jackie's truthfulness related to her handling of PLS cases generally and her handling of one PLS case specifically. This is independently verified when Jackie meets with OIG representatives whose questions to Jackie suggest that OIG has been told by PLS that Jackie had handled the case in the manner falsely alleged by the Acting General Counsel. Jackie tells the OIG people of the location outside of the RTC where documents can be found to substantiate Jackie's assertions of how she handled the case. The OIG confirms the location of these documents and later the PLS Section Chief claims these documents had just been mislaid. RTC implies it's false allegations about Jackie's handling of the case was therefore based on ignorance due to mislaid documents. This is unusual because the "mislaid" documents in question resided in multiple locations within the RTC Legal Department. Not only did multiple managers in Denver and Washington, D.C. receive the documents in question, the Acting General Counsel had previously received and reviewed a set of these same documents when Jackie was the PLS Section Chief and she was required to send them to him for review. In response to these false and slanderous allegations, Jackie sends a memorandum to the Acting General Counsel, copying other RTC Senior Managers, asking that he address his allegations to her directly so that she can prove they are false. Jackie never gets a response from him or anyone copied on the memorandum nor from anyone else in the RTC. Jackie informs her Washington source of her communication to the Acting General Counsel and the fact that she has never received a response.</p>	Slander	Retaliation, Harassment
11/18/92	<p>Denver AGC inquires about status of pending work projects of Bruce and Jackie knowing that they have been working on the Senate testimony and knowing that the entire RTC workforce in Bruce and Jackie's building have been packing for a move the next day. 24 minutes later she informs Jackie and Bruce by email that they have new assignments with the Denver Legal Department. She tells them they will be moving back to the legal department offices the following Monday.</p>	Retaliation	Harassment, Jobs

Date	Description	Category	Cross-Reference
11/18/92	<p>Jackie is assigned a position as a line attorney in the Assets Division doing residential real estate contracting. Jackie has always done commercial law in the past and has never done residential real estate work. This type of work does not utilize Jackie's extensive background in the more complex commercial real estate area nor her extensive background in complex, commercial litigation. Most of the attorneys doing this work are GG 12's or GG 13's and most have less experience than Jackie. Jackie is a GG 15 due to her managerial status and 15 years of legal practice. This same situation holds true for Bruce, who is also a GG 15 with many years of legal practice. Bruce is assigned work as an environmental lawyer, a field for which he has no background. He is given paralegal type work in the environmental area. Bruce's extensive and significant work in several government agencies and in the PLS complex litigation area is completely unused in this assignment. Other slots (including multiple management slots) within the Denver legal department which would use their talents remain unfilled or are being filled by lawyers with less experience than Bruce or Jackie for the position. Jackie and Bruce are never allowed to "lateral" into management slots in the same manner other lawyers who were their peers prior to the reorganization were allowed to "lateral" into slots. Bruce and Jackie are not appointed "acting" managers in the same fashion that many lawyers with less experience in an area and less management experience were appointed "acting" managers. This is happening despite the fact that both Bruce and Jackie had sterling performance evaluations.</p>	Retaliation	Job's Harassment
11/19/92	<p>ALL RTC employees except Bruce and Jackie move out of the ARCO Building. Bruce and Jackie remain as the sole employees on two floors of the building for one week. They finally move to the Legal Department. 11/27/92. Bruce moves into an office that had been a storage room for boxes during the time he was located in the ARCO building apart from the legal department. Bruce's new supervisor is located in Bruce's former PLS office, sitting at Bruce's former desk.</p>	Retaliation	Harassment

Date	Description	Category	Cross-Reference
11/24/92	<p>After languishing in Washington, D.C. the EEO hearing examiner now wants to commence formal investigations of Jackie's complaints the week of Thanksgiving. Jackie receives a message on her home phone stating that she is to call a lawyer who represents the RTC. There is an exchange of calls during which the paralegal talking to Jackie keeps stating that she works for the lawyer that represents the RTC in Jackie's EEO matter. Finally, Jackie determines that this lawyer is the "impartial" hearing examiner who is to investigate Jackie's EEO complaint. Jackie resists these attempts because of the holiday season, all of the competing commitments of her new assignment which is to commence the same week, the move of offices which will again disorganize her files (as well as a computer access and preparation time), several personal family issues, etc. The EEO keeps pressuring and Jackie attempts to explain how unreasonable their unusual haste is in the face of how long this had languished in the Washington EEO office (from June). She gets them to agree to postpone the matter until she hires counsel and contacts them after the Thanksgiving holidays. In December she suddenly receives notice from the RTC EEO office that they intend to close her case unless she immediately commences the formal hearing process. She talks to the head of EEO and explains the previous agreement, the circumstances surrounding her employment, and that she had initiated yet another related informal complaint for retaliation. She submits all this in writing and gets an extension on the formal investigation until after the related matter goes through the required informal stages.</p>	EEO	Retaliation Harassment
12/2/92	Bruce writes to the AG protesting his new assignment. He asks questions to clarify how he was assigned to a slot for which he has no background, yet they fail to assign him to open positions which would utilize at least some of his background. He receives no answers.	Retaliation	Harassment - Jobs
12/3/92	Bruce writes to the FOIA office inquiring about whether he and Jackie will receive a response to their FOIA communications of 11-17-92 and 9-12-92.	Retaliation	FOIA Harassment
12/4/92	In response to Bruce's inquiry about when we would hear from the FOIA office regarding our pending fee waiver appeal, the FOIA office advises Bruce that he and Jackie would learn of the appeal results when it was decided. He further refuses to disclose the staff attorney to whom the appeal had been assigned.	FOIA	

Date	Description	Category	Cross-Reference
1/24/92	Jackie receives delinquency notice from the Diner's Club regarding \$835.10 worth of charges incurred in connection with previous travel. Jackie had submitted her travel reimbursement to the Denver Legal Department several months previously. Also, Jackie had previously contacted the Denver Administrative unit when she failed to receive reimbursement of all expenses (including the Diner's Club expenses and Jackie's out of pocket expenses) for which she had submitted a request. Jackie again checks with the Denver legal department administrative unit on 12/18/92 when she had still failed to get reimbursement.	Retaliation	
1/24/92	FOIA office responds that our requests from 8/92 and 11/92 are still pending and will take longer. They admonish Bruce not to use RTC email to pursue the FOIA request because the RTC considers this to be a personal matter.	Retaliation	Harassment FOIA
1/24/92	Bruce emails FOIA office explaining that use of Email was an effort to conserve agency resources and the FOIA request was made in an effort to secure information in pursuit of the pending grievances, which are agency business. He also asks for disclosure of the name of the RTC lawyer handling the appeal.	FOIA	
1/24/92	On or about this date Jackie is interviewed for the four section chief slots for which she has made the roster. Her scheduled interview for these slots has been postponed and rescheduled at least four times by the AGC. She is one of the last persons to be interviewed on the eve of the roster expiring. The scheduling and rescheduling of Jackie's interviews for management slots and interviewing her immediately before the roster expires as the last or one of the last interviews becomes a pattern in all future interviews. In this major interview she is interviewed by three managers. Two of the managers are persons she has named as involved in discriminatory practices in her EEO complaints. The third is a manager who is not involved in any of the other interviews for this slot with any other rostered candidates. Bruce also interviews for these positions, but all three of his interviewers are the same people who interview the rest of the candidates. Two of the managers who interview him are given in his personal grievance proceeding.	Retaliation	EEO, Jobs Harassment Grievance
1/24/92	AGC Denver announces the selection of persons who are selected for the four Denver Section Chief slots. Neither Bruce nor Jackie are selected even though they have as much or more experience than the appointees as managers and in the required substantive areas.	Retaliation	Jobs Harassment
1/24/92	RTC FOIA attorney advises Jackie and Bruce that additional processing time would be taken by the FOIA office beyond the appeal deadline of 12/16/92 to process their appeal.	FOIA	
1/24/92	Mail problems continue. Jackie's former law firm sends her information regarding Jackie's former client's appeal of litigation for which Jackie had been the trial level attorney. This mail is delivered to Jackie opened and date stamped by persons unknown.	Retaliation	Mail Harassment Attorney/Client Privilege

Date	Description	Category	Cross-Reference
1/7/14 (a)	Jackie commences another informal EEO action based upon retaliation when RTC had threatened her coworkers for being seen with Jackie and based upon her failure to be selected for a section chief slot in the most recent hirings. Jackie seeks guidance from the EEO counselor on how to handle administrative issues of having related matters pending at two separate stages of the administrative process. Her original discrimination complaint is about to be formally investigated by a hearing examiner. She now has a related complaint at the informal EEO stage which is based upon retaliation for filing the original complaint. It makes no sense to handle them as unrelated matters since they involve related parties and facts.	EEO	Harassment Retaliation
12/14/92	Bruce and Jackie communicate with Congressional staff seeking to determine why Denver administrative unit personnel are spending so much overtime during the last half of weeks shredding documents during the evenings and on weekends.	Whistleblowing	Document Shredding
12/16/92	RTC establishes EEO committee to "bring together our cultural differences and strengths as a means of enhancing equality of opportunity for all employees." It is announced to the field on or about 12-29-92.	Directives	EEO
12/16/92	The Denver RTC issues a mailroom policy which directs that all employees (except VPs, ethics office, personnel department, investigations unit, and the OCOS unit) will be subject to their mail being opened by the mailroom. This is allegedly for purposes of checks and money being transmitted. It cites a policy directive presumably issued 10-17-91 governing mail received in the Denver offices. This is not an RTC-wide policy. It only affects Denver. The existence of the previous policy is mysterious since earlier in the year when Jackie, the EEO counselor and perhaps the OIG had sought this illusive policy, no one in legal (including the administrative unit responsible for mail) could provide a copy of this faithfully followed but never available policy. The new policy is interesting in its assumptions that the persons and units exempted from its scope never receive checks or cash or that they are so expert that they never hire anyone who might withhold, forget to deposit or misappropriate checks from the mail they receive.	Directives	Mail
12/16/92	OIG contacts Bruce and Jackie to commence meeting with them regarding Bruce and Jackie's joint testimony in rebuttal of the 10-1-92 testimony of the RTC. Even though they have submitted testimony in a joint written statement, the OIG requires them to be interviewed separately in this series of meetings. Bruce is scheduled for 12-21-92. Jackie is scheduled for 12-22-92. These are commencing over a month after the statement has been submitted. At the August hearing, it commenced the week Bruce and Jackie returned from the hearing.	Investigations	
1/11/93 (a)	A former putback and supporter of Bruce and Jackie writes to CEO Casey to object to the abusive treatment being directed at Bruce and Jackie. To our knowledge she never received a response.	Whistleblowing	

Date	Description	Category	Cross-Reference
1, 2, 7, 14, 3	In her most recent EEO complaint Jackie has asked for reinstatement of all annual leave she was forced by the AGC to take to pursue EEO complaint related activities. Because of the circumstances of Jackie's forced exile from the legal department and because previous requests for copies of her time sheets had not been honored Jackie had no documentation to determine the annual leave she had previously taken. She asks for copies of time sheet information from 5-7-92 to 12-21-92. She also asks for other information which the EEO counselor needs for the pending complaint. She asks for copies of Denver legal manager postings and Denver legal department organizational charts during this time and for her present staff attorney job description and posting.	EEO	Retaliation Harassment Jobs Leave Time
1, 2, 7, 14, 3	Jackie asks the EEO counselor to advise the Denver AGC of the provisions of the RTC EEO directives. The AGC had previously and improperly directed Jackie to take annual leave except in two limited cases when working on her EEO complaints. The EEO counselor discusses the matter with the AGC. The AGC's alleged reasons for improperly imposing this requirement on Jackie is that at sometime in the past, someone whose name and position the AGC could not remember told the AGC that was the rule. She now agrees that the directives are broader than the requirements she had imposed on Jackie but no one will reinstate the annual leave Jackie had previously and faultily been forced to take to pursue the EEO matters.	EEO	Retaliation Harassment Leave Time
1, 2, 7, 14, 3	AGC Denver sends directive to legal staff to cooperate with all OIG investigations and restrict discussions of any matter under OIG investigation with others especially persons outside the agency.	Directives	
1, 2, 7, 14, 3	FOIA office again denies Bruce and Jackie's request for fee waiver and joinder of the Government Accountability Project which was being pursued in their appeal	FOIA	

Date	Description	Category	Cross-Reference
12/24/92	The Denver administrative unit tells Jackie that they cannot provide her with the information she had requested in connection with her pending EEO complaint. They are too busy. Jackie tells the EEO counselor that she cannot get the information the EEO counselor needs to investigate Jackie's complaint. The EEO counselor tells Jackie that she will ask the Denver administrative unit for the information. The EEO counselor also cannot get the information. On 12-30-92 Jackie asks the administrative unit whether or not they ever intend to provide the information necessary for her EEO complaint. On 12-31-92 the administrative unit writes Jackie and says that their supervisor is out until 1-11-93 and they cannot answer when or if they will provide the information. They will pass Jackie's 12-30-92 request to the supervisor for response when she returns. On 1-11-93 the supervisor informs Jackie that the information cannot be provided for an indefinite period of time. Jackie NEVER gets this very basic information. As a result she is unable to tell the EEO counselor necessary information at the informal resolution stage and the leave Jackie has been forced to take for EEO purposes cannot be proved so it can be reinstated.	EEO	Retaliation, Harassment
12/30/92	Members of other RTC PLS offices (including PLS in D.C.) forward Jackie a copy of an email from the Denver PLS which informs D.C. to take Jackie's name off a report which shows Jackie as being a PLS attorney. The Denver PLS wants to make it clear that Jackie has not been a PLS attorney since May, 1992. The various recipients of the email comment on how hostile certain Denver PLS people are when it comes to Jackie and Bruce.	Retaliation	
1/11/93	Brad Smolkin files his written rebuttal to the RTC's testimony and staff report presented at the 10-1-92 hearing.	Whistleblowing	
1/11/93	Interviews with management commence related to Jackie's third informal EEO proceeding. She had filed based upon the harassment of her co-workers by management. The Denver PLS Section Chief tells the counselor that he had made his comments to Jackie's co-workers because "very confidential information was being leaked to the press". The AGC says the comments were made to Jackie's co-workers as warnings on attorney-client privilege and to "not to give the impression of impropriety when socializing". The attorney client statement misstates the law since Jackie is an attorney for this client in question. The two employees in question tell a different version of facts. One says that on two occasions her manager, the PLS Section Chief told her to "choose sides and that Jackie should not be treated as an RTC employee". The other employee says that management told him after having lunch with Jackie that "he had been seen breaking bread with the enemy". Directly after this he was excluded from a meeting with this same manager and a PLS attorney explained that he was a "persona non grata" with legal management.	EEO	Retaliation, Slander, Harassment

Date	Description	Category	Cross-Reference
1/17/93	The RTC issues a directive regarding the use of telephones and voice telecommunications	Directives	
1/17/93	Jackie writes to tell the EEO counselor of her continuing unsuccessful attempts to obtain information from the Denver administrative unit. Jackie has indicated to the administrative unit that if Jackie can't get the information directly, the EEO probably will be asking for it. The supervisor's response that she was just too busy to give the information to the EEO or Jackie irrespective of anyone's request. Jackie tells the EEO counselor that this information request should not be extensive nor difficult for administration to provide. She tells the EEO officer of the extensive document shredding that has taken up so much of the administrative unit's time recently. Perhaps that is why they will not pursue this simple request for either Jackie or EEO. Because of the failure to provide this information, Jackie's EEO counselor must extend the informal counseling time frame. The EEO counselor was to leave employment with the RTC shortly. The EEO Counselor is forced to complete the informal counseling attempts without ever receiving this needed information.	EEO	Retaliation, Harassment, Document Shredding
1/15/93	Congresswoman Schroeder writes to CEO Casey expressing her concerns about the PLS reorganization and treatment of Bruce and Jackie. She makes a request for documents from the RTC related to these issues.	Whistleblowing	
1/20/93	On or about this date a Denver legal department employee tells Jackie that someone in the Denver legal management had asked the employee to secretly watch all of Jackie's coming and goings from her office and to report on these comings and goings to legal management. This person refused the manager's request. She tells Jackie that she wanted Jackie to know about this request because the employee was certain that someone else was then asked to perform this task and had agreed to do it.	Retaliation	Harassment, Secret Surveillance
1/25/93	The Denver VP (business side) issues a directive setting up a Denver EEO committee stating that the RTC is firmly committed to promoting equal employment opportunities through an effective and viable EEO program.	Directives	EEO
1/26/93	Jackie receives notice from a business facilities person that her "phone is on forward again" and he did not reach her on repeated attempts to call her even though he knew she was in her office. Jackie had not forwarded her telephone and attempts to disengage the forwarding feature did not correct the problem. Later the problem just "cleared up."	Retaliation	Telephones harassment
1/28/93	Jackie and Bruce appear on two Denver radio talk shows to answer questions about the RTC PLS reorganization, their testimony before Congress, etc. A local newspaper had run an extensive story about Bruce and Jackie several weeks prior to this. Bruce announces that they intend to file a FOIA suit against the RTC that day.	Whistleblowing	FOIA

Date	Description	Category	Cross-Reference
1/18/93	Bruce and Jackie sue RTC to compel waiver of FOIA fees	FOIA	
1/24/93	The corporation issues an EEO directive regarding the RTC's policy and procedures used in assessing EEO efforts in the referral and selection process, as well as internal movements in the restructuring and downsizing of the corporation. The process is stated as being "designed to help management in achieving the EEO program goals and objectives." The circular is dated 1-28-93, is date stamped 2-9-93 but is distributed to Denver legal personnel in late March, 1993, and bears the fax date of 3/22/93	Directives	EEO
2/3/93	Jackie is told by EEO counselor that her third informal EEO action for retaliation cannot be resolved by informal means. She must file a formal complaint with the RTC EEO to pursue it. One of the bases for this informal complaint was the threatening of other RTC employees because they were seen with Jackie	EEO	Retaliation, Harassment
2/8/93	A PLS attorney from the Dallas RTC asks Bruce to act as his grievance representative for the grievance the attorney had just filed. Bruce accepts. Over the course of the next few months this person receives extreme harassment from Dallas legal management. He ultimately quits the RTC and moves to another state in order to secure employment	Whistleblowing	Harassment, Retaliation, Grievances
2/8/93	In an email, Jackie asks the OIG if they are convinced that emails and telephone calls from Bruce and Jackie to the OIG are confidential. She observes that if these communications are not confidential this is harmful to the security and confidentiality of pending OIG investigations	Unauth Comput	Telephones, Computers
2/8/93	OIG responds to Jackie's concerns regarding confidentiality of telephone and computer communications by stating that "wire tapping and computer tapping" constitute "multiple felonies" and the such surveillance "constitutes an illegal search absent a subpoena" or absent a court order	Unauth Comput	Computers, telephones
2/8/93	Mail invasion continues. Bruce informs legal management that mail from the Senate Banking Committee has been delivered to him opened. Another envelope was addressed to him and stated "personal and confidential." Inside was yet another sealed envelope which stated "To Bruce Pederson Confidential. To Be Opened Only By Bruce Pederson" which had been opened	Mail	Retaliation, Harassment
2/15/93	Jackie files another EEO formal complaint based upon retaliation. This is filed with the Washington RTC EEO Office after failure to informally resolve the most recent informal complaint	EEO	
2/15/93	Bruce and Jackie write to a Clinton White House staff member to enlist help relative to the problems at the RTC. They never get an acknowledgement nor a response from this person. They have no way of knowing whether or not their communication was acted upon or passed on to the RTC	Whistleblowing	

Date	Description	Category	Cross-Reference
3/16/93	On or about this date the OIG agrees to approach Denver management regarding all the various methods of retaliation that have been directed at Bruce and Jackie by the RTC management. They only will do so if they can use Bruce and Jackie's names. Bruce and Jackie agree to this. The OIG discusses these matters with management and nothing comes of it. Legal management basically says these are administrative matters and none of anyone's but Legal's business.	Retaliation	Whistleblowing Harassment
3/17/93	CEO Casey tells RTC he is resigning and will leave the RTC at the beginning of April 1993.	Directives	
3/22/93	Bruce and Jackie receive notices that a grievance examiner has been appointed. Each notice is dated 2-11-93. It has been opened by someone else and date stamped 2-17-93. Jackie and Bruce receive it 11 days after it is dated. The fact that they even get this notice is very mysterious since no one has ever before responded to questions regarding these grievances and they have been languishing for a very long time. Further, the notice contains unusual information. It states that "despite some attempt to resolve issues raised in your grievance, it is clear that there are matters raised that have yet to be resolved." Jackie and Bruce are surprised since there appears to never have been ANY attempts to respond to the issues raised in the grievances. The notice states that they will be contacted "within the next several weeks by the examiner."	Grievance	Retaliation
3/22/93	The Senior Counsel position is posted and both Jackie and Bruce apply and make the roster. They are both interviewed for the position. As of 9-20-93 the slot remains unfilled.	EEO	Jobs
3/23/93	Jackie is forced to forfeit another AWS day for which she had worked all the required advance 9-hour work days when she is needed to attend meetings in Texas on the scheduled AWS day.	Retaliation	Harassment, Leave Time
3/24/93	Bruce sends an email to the pulbacks which has an attachment comprised of CEO Casey's testimony before congress. He is critical of Casey's motives and testimony in light of the recent management bonuses. He makes a critical remark about the AGC's likelihood to "deny knowing anything about this travesty." Management later uses this email as a pretext for the breakin to Bruce's computer files by the AGC (which is ordered by the Acting General Counsel).	Whistleblowing	Computers Unauthorized Computer Entrance

Date	Description	Category	Cross-Reference
7/26/93	Jackie and Bruce each write to the RTC Grievance office to ask multiple questions concerning the conduct of the grievance proceedings. The RTC grievance circular and the Notice of Appointment of a grievance examiner dated 2-11-92 do not give any clue as to procedures to be used. They also take issue with certain inaccurate statements contained in that communications. Since the class action grievance had apparently been dismissed as procedurally incorrect, Jackie has no clue as to how her unsual proceeding would now be conducted. Jackie also forwards her questions regarding grievance procedures to the RTC Washington Senior Personnel Attorney	Grievance	
7/26/93	RTC management has told Bruce they intend to give him a performance evaluation. This is so even though he has been reporting to his present supervisor for a relatively short period during which he has had little substantive work to perform upon which to be reviewed. In light of the many unwarranted hostile comments directed to and the continuing slanders about Bruce and Jackie which have been made by legal management, they suspect that this is an attempt to give him (and later Jackie) a negative review. Negative reviews will, of course, hamper their careers in any government agency and their chances for promotion. Bruce writes a memo to his section chief explaining why he does not want and should not be required to receive a review at this time	Retaliation	Harassment
7/28/93	The Washington RTC Senior Personnel Attorney responds to Bruce's inquiries about use of RTC time to pursue grievance matters. Bruce's supervisor had asked him to pose the question of whether or not this was permitted as the grievance circular is silent on this issue. She responds that there is no entitlement to use RTC time but that generally a "reasonable amount of time" is allowed	Grievance	
7/28/93	Jackie and Bruce file another FOIA request with the RTC FOIA office	FOIA	
7/1/93	RTC answers FOIA complaint with eight lawyers from the RTC and Department of Justice listed on the signature page as representing the RTC	FOIA	
3/2/93	On or about this date Bruce and Jackie learn of the individual excessive bonuses paid to the same RTC managers who had created the PLS reorganization and who had been retaliating against them ever since. Even the former General Counsel got a \$10,000 bonus after he had left the RTC. Allegedly, his bonus came from a fund for incentive awards to rank and file RTC personnel, rather than from the fund set up to give bonuses to RTC management. There is alot of negative press coverage regarding the bonuses both on television and in the newspapers. Am ABC news crew catches CEO Casey in the RTC garage and confronts him about these bonuses, which he defends. Various elected representatives publicly criticize the bonuses. Bruce is named as the source of this information to a Denver newspaper. A member of OIG approaches Bruce to learn what he knows about the bonuses	Whistleblowing	

Date	Description	Category	Cross-Reference
3/3/93	Bruce and Jackie are contacted by a new employee in the RTC grievance office to let them know their grievance files had been turned over to her. She intends to respond to the questions Bruce and Jackie posed. She emails Bruce and Jackie again on 3-5-93 to say that she cannot respond to the questions Bruce and Jackie posed on 2-28-93 until the following week.	Grievance	
3/9/93	Bruce and Jackie receive notice of the name of the grievance examiner (but no information about him) as well as the fact that he will come to Denver the following week on 3-17 to 3-19 to interview witnesses. It asks Bruce and Jackie to compile a witness list which includes the name, telephone number and "brief statement of what testimony each can provide." This brief communication does not answer the questions Bruce and Jackie posed on 2-28-93 and which answers they need in order to adequately prepare for whatever procedure the examiner intends to use.	Grievance	Retaliation, Harrassment
3/9/93	Bruce and Jackie compile a witness list with the information required by the notice they received from the RTC grievance office. Later, when the grievance examiner arrives in Denver, he criticizes them for their failure to provide "an affidavit about what the witnesses will testify to."	Grievance	Retaliation, Harrassment
3/9/93	AGC Denver agrees not to require that Bruce be given a performance evaluation at this time.	Retaliation	
3/10/93	Jackie writes to the RTC grievance office to renew her request that her questions regarding grievance procedures which were sent on 2-28-93 be answered so that she can prepare for the process the next week. She also inquires whether or not she will be interviewed. Because her questions have never been answered and the grievance circular is silent on the method, scope and procedural rules governing the grievance proceeding, she does not even know whether she will be interviewed or deposed and whether or not there will be more than one visit by the examiner to Denver to collect evidence. She asks for the RTC grievance office's assistance in persuading Denver legal management to let her prepare for and attend the proceeding without forcing her to take annual leave to do so. Jackie copies the Washington RTC Senior Personnel Attorney on this communication to the grievance office. This lawyer responds stating that she will speak to OHRM "to make sure proper procedures are being followed regarding your use of time for the grievance investigation." This attorney states that the attorney will be meeting with the grievance examiner regarding the putback process (she did the legal work related to that process) and she discloses that she had suggested other witnesses Jackie and Bruce are NEVER given the RTC's witness list.	Grievance	Retaliation, Harrassment

Date	Description	Category	Cross-Reference
11/10/93	It is announced that GAO will visit the Dallas office. The Dallas PLS lawyer for whom Bruce is the grievance representative will be an important source of information to the GAO. His supporters in the Dallas offices of the RTC are also cooperating with the investigation and have expressed their enthusiasm for this opportunity "for us to be heard" and "get a better system working". Legal management is using extreme measures of retaliation against this Dallas PLS attorney, including gag orders against talking to the client and the PLS section in Washington, D.C.	Retaliation	Harassment, Grievance
11/10/93	CEO Casey tells the RTC staff that he is leaving RTC earlier than originally planned and will leave on March 15, 1993.	Announcement	
11/11/93	Jackie writes to the Washington RTC Senior Personnel Attorney regarding Jackie's previous communications with that lawyer and with the grievance office. Jackie expresses the sentiment that she is once again attempting to give the RTC the opportunity to act in good faith during the grievance process. She expresses the hope that someone would answer her questions of 2-28-93 related to this unusual process. Jackie gets no response to this communication.	Grievance	Retaliation
11/12/93	As part of their ongoing cooperation with members of Congress investigating problems at the RTC (which was done in reliance upon the permission previously given by CEO Casey), Bruce finalizes a very sensitive and confidential communication to a member of Congress from Jackie and Bruce. This is done on his RTC computer in word perfect. This communication contains multiple areas of concerns and abuses within the RTC and suggest questions that should be asked of the RTC related to these areas e.g. shredding of documents, hiring of outside counsel, etc.	Whistleblowing	
11/12/93	AGC Denver, at the instruction of RTC Acting General Counsel, instructs an RTC computer specialist to break into Bruce's word perfect files and copy them into her computer.	Unauth. Comput	Computers, Retaliation, Harassment
11/12/93	Bruce and Jackie receive a biography of the grievance examiner from the RTC grievance office. They do not receive anything else, such as answers to their questions regarding the grievance proceeding about to commence.	Grievance	Retaliation, Harassment

Date	Description	Category	Cross-Reference
3/15/93	<p>Late in the day, the computer specialist ordered to break into Bruce's computer tells Jackie about the breakin. He says he felt it was improper to do this and he was very bothered about it. He tells her that he believes that he will be ordered to break into her data bases next. He tells her that breakins of other Denver RTC employees' computers have been ordered in the past. Jackie and he discuss going to the OIG. Jackie tells Bruce about the breakin. The next day they go to the OIG to complain. They are instructed to discuss this matter with no one else. Both follow this order. Nonetheless, they thereafter learn that the confidentiality of this investigation has been breached. No one can determine exactly how the legal management knows of the investigation and the details of Bruce and Jackie's complaint. Legal management had approached OIG with a demand to know why they were being investigated for this breakin before the OIG had inquired of management why this had occurred. Thereafter, Bruce and Jackie are released from the OIG requirement of not discussing the matter. As soon as the breakin becomes known by legal management, the Denver AGC starts to lobby persons on the business side of the RTC to fire the computer specialist. Ultimately, the computer specialist is removed from his assignment in the legal department. This is done against his will and to the dismay of many of the legal department employees.</p>	Unauth. Comput	Computers, Constitutional Rights, Retaliation, Harassment
3/15/93	<p>Bruce writes the grievance office to inquire whether or not he and Jackie will be interviewed by the grievance examiner. He also inquires as to the time frame and scope the hearing. Would it stop in August, 1992 or cover matters beyond that time frame? Because of the big snowstorm that week he also inquires if the grievance examiner really will be in Denver that week on 3/17 through 3/19.</p>	Grievance	Retaliation, Harassment
3/16/93	<p>The RTC grievance office sends partial answers to the questions Jackie and Bruce posed on 2-26-93. They inform Bruce and Jackie that they must meet with the grievance examiner at 11am the next day to present their information. He will then meet with other witnesses. It does not state who those witnesses will be. Bruce and Jackie never do learn who he meets with until after he has completed his interviews and they receive copies of the interview affidavits. When they receive copies of affidavits of witnesses interviewed, Jackie and Bruce are very surprised to learn that many of their major witnesses were not interviewed by the examiner. Many witnesses, however, were interviewed who were not on Jackie and Bruce's witness list. Some of these RTC witnesses interviewed had little or nothing to do with Bruce and Jackie or the reorganization design during the time scope to which the examiner limited the grievance. No one had ever consulted with Bruce and Jackie about prioritizing their witnesses. They never find out how or why their suggested witnesses were included or excluded from the grievance process.</p>	Grievance	Retaliation, Harassment

Date	Description	Category	Cross-Reference
3/16/93	Jackie tells her supervisor about the time commitments she will need in order to participate in her grievance proceedings which are to commence the next day. She also tells him of all the competing "crisis" and competing scheduling issues which are suddenly materializing and which are filling up all her time without her being consulted	Grievance	Harassment, retaliation
3/16/93	Bruce writes to FOIA office to inquire whether or not he will receive a response or a confirmation from them of having received the 2-28-93 FOIA request. The next day Bruce receives an email from the FOIA office saying that they are processing the request "as we speak"	FOIA	Retaliation, Harassment
3/16/93	Treasury Secretary Bentsen appears before the House Banking Committee to testify about the RTC in connection with the RTC funding bill. There is significant resistance to passing a funding bill. Bentsen testifies about the nine objectives he has set for the interim CEO of the RTC. These objectives include improving internal controls in areas of fraud and mismanagement, improved responsiveness to OIG and GAO reports and improve results in the PLS area	Announcement	
3/16/93	Some of the RTC field offices (not Denver) receive an announcement that Roger Altman from the Treasury Department will be the acting RTC head until the Clinton Administration can nominate a permanent RTC CEO and have that person confirmed by the Senate	Announcement	
3/16/93	Jackie writes a memo to the RTC grievance office objecting to the fact that most of her questions remain unanswered, including material questions related to how tomorrow's grievance proceeding will be conducted. What is the scope of the proceeding, who are the witnesses, what type of record is to be made (i.e. sworn testimony? a court report? and tape recorder? etc.). She objects to the fact that she has been given less than 24 hours from receipt of the partial answers to prepare for this proceeding and she still does not know the relevant methods that will be employed by the examiner so that she can properly prepare. This remains grievance proceedings by surprise and surmise	Grievance	Retaliation, Harassment

Date	Description	Category	Cross-Reference
4/16/93	<p>On or about this time a section chief in Jackie's section criticizes Jackie's lawyering efforts on a contract matter. Jackie attempts to explain that she had followed all the mandatory rules imposed by the contracting section (as Jackie had been instructed) and the legal result was an automatic and unalterable conclusion if a lawyer followed the RTC mandatory rules. Jackie had modeled her legal opinion on one that had been prepared by the section chief in identical circumstances to the one Jackie was working on. The issue had been raised, however, in Jackie's situation because, additionally, Jackie had discussed with the client Jackie's questions about the wisdom of conflicting rules which result in an unwanted conclusion. The section chief ignored Jackie's explanation and continued to criticize Jackie. Jackie's legal project is halted pending a decision from D.C. on how to proceed in light of the conflicting mandatory rules. Later that day, it becomes known to others that the section chief who criticized Jackie had treated a recent contract in the same manner as Jackie had, following the same rules and coming to the same conclusions. The Section Chief never acknowledges her error. Shortly thereafter she gives harmful and negative testimony in Jackie's grievance proceeding about things which were not within the specific knowledge of the Section Chief during the period time about which she was giving testimony.</p>	Retaliation	Grievance, Harassment
3/11/703	<p>The grievance examiner conducts the grievance proceedings. Bruce and Jackie are interviewed the first day under oath. A cumbersome and obsolete method of giving testimony is used by the examiner. The examiner asks witnesses a series of questions and then the examiner takes notes on their answers. There is no tape recording or court reporter to keep an accurate record of what is said. At the conclusion, the examiner gives each witness an "affidavit" to sign which has been prepared in the examiner's words by the examiner. It does not contain all details of what has been said or all proof given. This process is used when interviewing all witnesses including Bruce and Jackie. In their interview, the examiner cuts both Bruce and Jackie off and will not let them tell him complete their presentation for the record. He interrupts their answers and jumps around with his questions. He does not tell them about who he will interview or what he intends to ask the witnesses. He mostly discusses with them his hopes to produce a settlement in the matter and spends a lot of time inquiring of them what they require to settle and what they can expect from the RTC in any settlement. Jackie objects at the conclusion of the day that she has not been able to give her evidence. Jackie and Bruce ask to be allowed to submit written evidence for the record. The examiner tells them to submit it to him and he will consider whether or not he will accept the evidence. Bruce and Jackie submit a lot of written evidence which the examiner later returns to them refusing to accept it as part of the record.</p>	Grievance	Retaliation, harassment
3/17/94	<p>Bruce and Jackie write to Vice President Gore in hopes that it might help his "reinventing government" program about the problems at the RTC. They never receive a response or a confirmation of this being received. They do not know whether or not this letter was forwarded to the RTC or to Treasury.</p>	Whistleblowing	

Date	Description	Category	Cross-Reference
1/18/91	Jackie has previously applied and made the roster for the Senior Counsel, SWAT position. Again she is not contacted for an interview until the roster is about to expire. Again several interviews of her are scheduled and then cancelled by the AGC. Jackie is told she must interview the week of the grievance hearing since one of the interviewers will be out of town the next week. The interview is scheduled for 3-18-93.	Retaliation	Harassment, Jobs
7/19/91	Jackie is told by her supervisor that it is his understanding she cannot use RTC time to work on her grievances (except to attend the actual interview). Another RTC employee gives Jackie an email to Jackie's supervisor from someone in the RTC personnel office (which copies the head of the Washington Grievance Office and the Washington RTC Senior Personnel Attorney). This email responds to a previously posed question from Jackie's supervisor about whether or not Jackie can use RTC time to pursue her grievance. The employee from RTC personnel office states: "While I advocate the denial of official time to these grievants (Bruce and Jackie) to prepare their complaints against the Corporation, that advice may not be endorsed by upper management in this case."	Grievance	Retaliation, Harassment
4/22/91	The RTC OIG responds to Bruce and Jackie's February FOIA request. Included in the response is a redacted interview from 7-27-92 with a "person in a position to know" regarding the transfer of PLS attorneys to the FDIC. The file numbering sequence indicates this is a Denver OIG file. Based on the contents of the interview and because the person was left to be a person in a position to know, the person interviewed would most likely be a senior Denver legal department manager. The person interviewed made slanderous statements such as "PLS attorneys had not been doing a good job for the RTC and were being returned to the FDIC because they had, in effect, made a mess of the PLS program." The interviewee stated that "no one in the RTC would tell the truth about the return of PLS attorneys because it would make the RTC look bad." It contained other statements of this type.	Slander	FOIA, Retaliation, Harassment

Date	Description	Category	Cross-Reference
3/27/93	<p>A SAMDA contractor complains to Jackie's Section Chief about outstanding legal requests assigned to Jackie. The complaint does not address the numerous assignments that Jackie has completed. Jackie has previously discussed with her supervisor on several occasions the enormous number of work assignments with unreasonable short deadlines that she is receiving. Often these deadlines fall on the same date and it is impossible for any one person to complete them all with in the deadlines imposed. Jackie responds to her supervisor in writing by citing the 49 assignments given to her in March by this single SAMDA. Jackie has responsibility for assignments from several other sources. Jackie shows her section chief that over the first three months of 1993 (when she is still new to the assignment and has not been given any training on RTC related requirements and forms). Jackie has been assigned well over 200 legal projects. She asks her supervisor to seek help from other lawyers to handle the unreasonable workload. The complaint is ironic in that during the previous week the RTC business oversight manager for this SAMDA had told Jackie's section chief how hard Jackie was working and all the help, time and effort Jackie had given them. This was told in response to her section chief's inquiry about how Jackie was doing. He does get her some relief and a number of the "crisis" matters are assigned to other lawyers to complete.</p>	Retaliation	Harassment
3/29/93	<p>On or about this date the Washington RTC Senior Personnel Attorney overrides the Denver AGC's decision to reinstate Bruce's forfeited annual leave. Bruce asks the AGC for any insight into this decision.</p>	Retaliation	Harassment, Leave Time

Date	Description	Category	Cross-Reference
4/5/93	Bruce and Jackie respond in writing to the unreasonable "settlement offer" from the RTC on their grievances. The offer requires Bruce and Jackie to: 1) dismiss with prejudice their pending grievances, EEO actions, and FOIA requests and lawsuits; 2) agree to a bar of any future actions or complaint filed within the RTC or state or federal courts related to their RTC employment prior to the date of the settlement; 3) agree to maintain strict obedience to RTC directives governing Congressional inquiries, press contacts, and use of agency resources and equipment; and 4) agree to strict confidentiality regarding the terms of the settlement--none of the terms are to be disclosed to anyone. In exchange, the RTC agrees to: 1) give us a letter from the Acting General Counsel stating the publicback decisions were not a reflection on our abilities as attorneys. The letter would express regrets that managements' actions were misconstrued by observers. Distribution of the letter would be at our time and expense; 2) restore our leave taken to prepare for and appear before congress; 3) restore sick leave taken due to job induced stress if we provide a note from a physician; 4) allow us to be pulback to the FDIC if we so desire, with no guarantees regarding timing, geographic location or position within the FDIC. The RTC would also cancel our RTC slots if this occurs; 5) reaffirm its policy prohibiting retaliation against agency employees; 6) Reaffirm to Bruce and Jackie, RTC's current policy regarding opening of mail. Bruce and Jackie reject the offer. No further settlement discussions are suggested by either side	Grievance	Retaliation, Harassment
4/7/93	A Denver email from the computer section tells RTC computer unit employees that if they receive a request from another RTC employee or department for access to another employee's personal computer files or subdirectories, "DO NOT GRANT OR ALLOW ANY LEVEL OF ACCESS TO THE REQUESTOR AND DO NOT VIEW ANY FILES YOURSELF." Jackie and Bruce had been told by more than one RTC employee in a position to know that it was the practice of the Denver RTC to allow supervisor's at the Department Head level to review any employee's computer files without that employee's consent or knowledge. This had occurred with respect to Bruce on 3-12-93	Unauth Comput	Computers
4/7/93	A lawyer from the Washington, D C RTC office is selected for the Denver Senior Counsel SWAT position over both Bruce and Jackie	Retaliation	Jobs, Harassment
4/8/93	The grievance examiner calls Bruce and Jackie to see if they have completed their review of the documents he had left in Washington for them. Bruce and Jackie tell him that they have never received these documents. He is surprised that we haven't been given them yet since had left them in Washington some time ago. Bruce writes to the grievance office asking about the documents and requesting that they be sent to our homes if they have not already been posted	Grievance	Retaliation, Harassment

Date	Description	Category	Cross-Reference
4/8/93	Jackie writes to the head of the RTC EEO office to inquire about the status of her pending EEO complaints and to inquire about the need to institute any further informal complaints based upon her failure to be selected for various legal management slots. Can these be subsumed in the previous complaint?	EEO	Retaliation, Harassment
4/10/93	The Grievance office writes to inform Bruce and Jackie that they have now sent out the papers left by the grievance examiner. They have sent it to Bruce and Jackie's home addresses in accordance with Bruce's request of the previous date.	Grievance	Retaliation, Harassment
4/12/93	Jackie writes to senior officials of the Treasury Department to inform them of various problems in the Denver RTC legal department. She is contacted by several Treasury officials in response to her letter. They promise to investigate the matters she raises.	Whistleblowing	
4/12/93	The RTC grievance office contacts Jackie and Bruce stating the grievance office had informed the examiner of the mailing to Jackie and Bruce of the packages of information the examiner had left for them. According to the grievance office, the examiner requests that Bruce and Jackie fax him "a brief statement once you have completed the review of your grievance file indicating such. This will be his clearance to move forward preparing his recommendations and findings." It sets no deadline by which this must be accomplished.	Grievance	Retaliation, Harassment
4/13/93	A group of employees from other RTC offices attempt to organize RTC employees at each RTC location to send letters to the Clinton Administration disclosing the problems at RTC. Bruce and Jackie, as well as other Denver employees and employees, are contacted by the organizers of this effort and assist in this effort to the extent they can.	Whistleblowing	
4/14/93	Congresswoman Schroeder writes to Bruce and Jackie to thank them for their efforts in attempting to eliminate waste, fraud, and abuse at the RTC. She copies RTC legal managers on the letter.	Whistleblowing	
4/14/93	The Cavallo Foundation tells Bruce and Jackie that they will receive the 1993 Cavallo Award for moral courage in business or government.	Cavallo	Whistleblowing
4/14/93	Bruce receives notice from the RTC personnel office that the RTC refuses to grant his request for restoration of forfeited annual leave.	Retaliation	Leave Time
4/15/93	On or about this date newspaper reporters start to contact Bruce concerning the breakin of Bruce's computer. During the next month multiple press articles appear regarding the problem. Also, during this time Bruce and Jackie inform various elected and appointed officials in the federal government of the computer breakin. There is a lot of hostility from the Denver AGC and her supporters. The AGC's staff will not even say hello to Bruce when they pass him in the hall.	Whistleblowing	Retaliation, Computers

Date	Description	Category	Cross-Reference
4/19/93	<p>The supervisor of the Denver legal department administrative unit emails Jackie and Bruce that the grievance examiner has contacted the supervisor (she does not state when that contact was made) and requested that she advise Bruce and Jackie that "if he does not hear from them by close of business on 4-19-93 he will close the hearing record." Bruce and Jackie are shocked. No previous communications to them had indicated any such severe and arbitrary deadline. Their grievance materials were not at the office so they could not finish anything related to the grievance review by COB that date. Further, they had intended to submit written comments/affidavits to supplement the record since the examiner had not allowed them to make full oral statements in preparing their affidavits nor allowed them to make complete submissions to the record. Bruce and Jackie respond with a memo to the examiner setting out their concerns of fairness regarding the hearing process and requesting until 4-28-93 to make submissions to the record. On 4-21-93 the Denver administrative unit supervisor again emails Bruce and Jackie stating the examiner has requested that she inform them that their request for an extension until 4-28-93 to supplement the record has been denied.</p>	Grievance	Retaliation, harassment
4/20/93	<p>Jackie asks the Denver legal administrative unit personnel how she can have Congresswoman Schroeder's letter to her included in Jackie's personnel file. Jackie also asks to see her permanent personnel file. Jackie is told that the Denver Office does not keep her permanent personnel file. These are kept in RTC's Washington offices. She is told that the Denver file is most likely different than the one in D.C. She is told to contact someone in Washington D.C. to answer her questions. Jackie emails RTC Washington personnel office posing her questions.</p>	Administration	Whistleblowing
4/20/93	<p>Jackie emails the Washington RTC EEO manager about Jackie's unanswered questions sent to her on 4-8-93 regarding whether or not Jackie needed to file another EEO complaint based on recent events. The RTC EEO manager finally sends Jackie an email responding to Jackie's previous unanswered communications. She tells Jackie to call her the next day. Jackie calls her the next day but does not reach her. Jackie emails her again and finally they talk on the telephone late in the day. The EEO manager responds to Jackie's concerns about the status of her pending actions by stating she is working on hiring an investigator. The EEO manager promises to send Jackie the overdue documents related to the EEO complaint Jackie filed in December and appealed in February (Jackie had not yet received the official notice of accepting the case nor the report of the informal EEO Counselor). Jackie is told that her most recent issues will be submitted in the allegations of the previous complaints already filed since they are the same type of previously alleged retaliatory behavior.</p>	EEO	
4/21/93	<p>Congresswoman Schroeder writes to Treasury Secretary Benisén and acting CEO Altman to express her concern over the computer break-in at the RTC.</p>	Whistleblowing	Computers

Date	Description	Category	Cross-Reference
4/23/93	Bruce is summoned to the AGC's office and meets with the AGC and Senior Counsel in charge of the administrative unit. He is accused of using the computer for personal use and instructed to refrain from doing so in the future. When questioned about what items caused the AGC to initiate the computer breakin and what items she felt were of a personal nature, she states certain letters were of a personal nature. The reason she gives for the breakin, however, is an email which was found in a printer and which was from Bruce to others discussing CEO Casey. This email had an attachment from word perfect entitled "Casey Shanenigans." The attachment was a transcript of CEO Casey's congressional testimony. This is not very personal in nature and the attachment is of the type RTC legal management frequently routed to persons throughout the RTC. Bruce argues that this email is not a reasonable basis to conclude that anything in Bruce's computer was of a personal nature.	Unauth Comput	Computer.
			Retaliation, Harrassment.
4/26/93	Denver AGC sends Bruce a memo attempting to summarize his meeting with her and the Senior Counsel on 4-23-93. It attempts to describe what she believes are examples of personal items found in Bruce's computer and why she felt she had a right to break into the computer.	Unauth Comput	Computers, Retaliation
4/26/93	All Denver lawyers receive their new business cards with proper address, telephone numbers, etc. Jackie is told that she will not receive hers at this time since the "printer" had put the wrong title on her card. Jackie consults her copy of the printer's business card request and notes that the correct information was given to the printer, including the correct title.	Harrassment	
4/27/93	Bruce writes to the Acting General Counsel and asks him if he was the Washington, D.C. official who ordered the breakin of Bruce's computer. Bruce never gets a response to his question.	Unauth Comput	Retaliation.
4/29/93	On or about this date Jackie is told by other legal staff members that legal management has for some time quietly been asking questions about whether or not Jackie is actually doing all her own work or is she having others do it for her.	Retaliation	Harrassment
4/29/93	The RTC writes to Congresswoman Schroeder responding to her request of 1-21-93 for information regarding the 1992 PLS reorganization. They tell her that on 2-24-93 they sent her transcripts of two senate hearings as a partial response to her request. They are now forwarding her some more information and will give her the rest of the information in the future. Much of the information the Congresswoman has requested is similar to the information contained in Bruce and Jackie's FOIA request which also remains in litigation limbo.	Congress	Whistleblowing

Date	Description	Category	Cross-Reference
4/21/93	The Denver RTC office of administration issues a directive to the Denver RTC governing computer systems. Among its major provisions are the requirements that the computer section approve all programs installed into the computer system, all systems which create, modify or COPY computer files must be reported to the ISU, and an inventory of all computer programs in each Denver RTC unit must be given to the ISU. The Denver office appears to be trying to determine what programs and computer program capabilities each section has and what is in its computers.	Directives	Computers
5/4/93	On or about this date the California PLS Section Chief announces to various of his employees that Bruce and Jackie have lost their grievance.	Grievance	Retaliation
5/4/93	Jackie writes to the RTC Washington personnel office to remind them of her request from 4-20-93 about how to access her official personnel file and how to have Congresswoman Schroeder's letter included in the file.	Retaliation	
5/15/93	Bruce gives the Denver AGC (with copies to OIG) a lengthy memo discussing the facts, statutes, case law, and legal opinions related to or governing the breakin by the AGC of Bruce's computer. These include citations to criminal laws, civil laws, constitutional laws and rights. He discusses and attaches exhibits to demonstrate all of the times he and Jackie had asked about surveillance of their offices, persons, electronic equipment, etc. and had objected to invasion of their privacy rights. He receives no response from the legal management to this memo. Shortly thereafter, Bruce sends it to other elected and appointed governmental officials.	Unauth. Comput	
5/16/93	The Denver Computer unit sends an email to all Denver computer users telling them 1) review their personal and group directories and delete all unwanted files, 2) especially review personal subdirectories and emails, and 3) delete unwanted files you have kept "especially," emails "with attachments." The email describes the exact timing of back up tapes being made to the computer system, how often the tapes are rotated, who owns the information in the computers, the fact that tapes are stored off premises and the legal requirement that all agencies retain permanent copies of all files and email correspondence even if the user has deleted the email. This communication is interesting in light of the asserted reason for the breakin of Bruce's computer.	Directives	Computers

Date	Description	Category	Cross-Reference
5/7/93	<p>Bruce puts a 5X7 note card on his door. It reads "In Remembrance of the Putbacks" May 7, 1992. "Some are Gone" "None are Forgotten". He also puts a single strip of black crepe paper which is about 1-1/2 inches thick across his door. About 2 05 pm Senior Counsel in charge of the administrative unit tells him to remove these from his door as they are creating a disturbance by people reading it. This is especially unusual behavior in that recently the newly appoint SWAT counsel had his entire office decorated in crepe streamers, balloons and glitter. the AGC's paralegal had her office decorated in balloons, streamers and glitter, the secretary in front of the Senior counsel had the walls around her desk covered with helium balloons which stayed there for many days, and many staff persons throughout the legal department had things mounted on their walls, doors, cubicles etc. with the express intention that others notice these items and be distracted for a moment by them. No one knew of the Senior Counsel ordering these other employees to take down these items. Bruce had been singled out.</p>	Retaliation	Whistleblowing
5/10/93	<p>The Washington Post carries an article on the breakin of Bruce's computer. The next day the front page of the Denver Post and the business section of the Rocky Mountain News carry articles on the breakin which give names of the persons involved. The RTC tells the computer specialist involved that they intend to transfer him from his assignment in the legal department. The AGC has been continuing her efforts to have him fired. In doing so the computer specialist has bern told that she has made many slanderous remarks about him.</p>	Unauth Comput	Retaliation, Computers
5/11/93	<p>Jackie receives a partial response from the RTC Washington personnel office to her inquiries of 4.20.93 regarding how to be permitted to review her personnel file and how to have Congresswoman Schroeder's letter included in the file. She is given the name and telephona number of someone who can assist her in procedures governing review of her personnel file. He does not answer the question related to the Congresswoman's letter.</p>	Retaliation	
5/16/93	<p>Bruce submits memo to RTC OPM again requesting restoration of his forfeited annual leave.</p>	Retaliation	
5/18/93	<p>The Denver AGC distributes to the entire legal staff copies of testimony by Senator Domenici discussing the RTC. Congressional testimony regarding the RTC appears to be RTC business if it is distributed by an E-1 and above. If a GG-15 distributes it, then it appears to be personal use of RTC equipment.</p>	Congress	
5/19/93	<p>Washington RTC attorney responsible for personnel matters issues extensive memorandum to Acting General Counsel regarding the alleged managerial, legal and factual bases for the breakin of Bruce's computer.</p>	Unauth Comput	Retaliation

Date	Description	Category	Cross-Reference
4/14/93	Bruce writes to the California PLS Section Chief and asks him to give Bruce and Jackie whatever information he has in his possession concerning their grievances (over two weeks ago this manager had announced that Bruce and Jackie had lost their grievances, yet Bruce and Jackie had heard nothing and had been contacted by no one concerning the status of their grievances. It seemed very improper that a PLS manager in another city who was not involved nor a witness in the grievances should know the status of the grievance but Bruce and Jackie had been told nothing. The manager never responds to Bruce or Jackie.	Grievance Retaliation	
5/19/93	Congresswoman Schroeder writes to Attorney General Reno inquiring about the Justice Department's role in the break-in of Bruce's computer after news articles disclose that the RTC press office stated the RTC had consulted with Justice before breaking into Bruce's computer.	Unauth Comput	
5/20/93	Jackie writes to EEO office and summarizes discussions from April. She again inquires about the status of her case and when she will receive the expected documents.	EEO Retaliation	
5/20/93	Bruce writes to Treasury officials regarding the mistreatment of him and Jackie by RTC management. They acknowledge his communications and later discuss them in person when Bruce and Jackie are in Washington, D.C.	Whistleblowing	
5/24/93	Jackie and Bruce make the roster for the Denver Senior Counsel Position in Assets. Jackie has requested and been approved for annual leave. It is a well known fact within the office that Jackie is leaving the country on May 29. As in the past, Jackie's scheduled interview date is changed multiple times by the AGC. Jackie finally has her interview with the AGC and the Senior Counsel on 5-25-93.	Retaliation Jobs	
6/16/93	The RTC learns that Jackie and Bruce are to receive the Cavallo Award for moral courage which comes with a cash prize.	Cavallo Whistleblowing	
6/28/93	Jackie is to leave the country tomorrow. Bruce (not Jackie) gets a call from the Denver RTC Ethics office inquiring about the Cavallo Award. The initial telephone conversation is very discouraging and implies to Bruce that he and Jackie will not be allowed to accept the award or the travel reimbursement to Washington D.C. to receive the award. Bruce responds with the requested information, the federal regulations which allow us to accept the award including the cash. He also explains some of the dignitaries who will be present and asks for a speedy determination by the Ethics office. The ceremony is to occur on June 9 in Washington D.C. and arrangements need to be finalized. He copies the Washington RTC Ethics office on this.	Cavallo Retaliation	

Date	Description	Category	Cross-Reference
5/28/93	The Washington Ethics office sends Jackie and Bruce an email asking more questions about the Cavallo Award. These questions do not appear to arise from issues and restrictions addressed in the Code of Federal Regulations provisions governing federal employees receiving this type of award. The questions appear to be directed at whether or not the RTC can find some basis to forbid them from receiving the award by making a questionable argument that Jackie and Bruce received this award in exchange for improper influence related to their employment with the RTC. There is no factual basis for any of the inferences drawn from this line of questions. The Cavallo Foundation and the entity nominating Bruce and Jackie have no RTC connections.	Cavallo	Retaliation
6/1/93	The RTC announces a new program which is an effort to improve RTC personnel offices' functioning, outreach, responsiveness, compliance and familiarity with directives etc. It announces that OHPM will work with management to standardize personnel reports and status updates on monthly employee activities. It is called the Gold Service Program. It comments on the "challenge of downsizing in the field, to [the challenges of] reorganizations in headquarters".	Directives	
6/4/93	Bruce and Jackie are told by the Washington Ethics office that they will be allowed to accept the Cavallo Award including the cash prize.	Cavallo	
6/4/93	Bruce writes to President Clinton regarding the problems in the RTC. He receives no response to his letter. We do not know if it was forwarded to officials at the Treasury Department or the RTC.	Whistleblowing	
6/4/93	Jackie and Bruce are honored at a reception in Washington D.C. at which time Congresswoman Schroeder presents them with the 1993 Cavallo Award for Moral Courage in Business and Government.	Cavallo	
6/10/93	Bruce and Jackie meet with Treasury Officials to discuss Bruce and Jackie's concerns. The meeting is pleasant but not much is offered or promised regarding their concerns. Bruce and Jackie engage in a continuing written and oral dialogue with officials of the Treasury Department, up through and including the month of August, 1993.	Whistleblowing	
6/10/93	Jackie and Bruce attend a House Judiciary Committee meeting as observers. The Committee is debating extension of the statute of limitations for fiduciary liability. There are several RTC managers at the hearing but none of them speak to Bruce and Jackie.	Retaliation	

Date	Description	Category	Cross-Reference
6/10/93	After discussing the unfairness and mystery of their grievance proceedings, Jackie and Bruce are told by a member of senior management from Treasury that the RTC grievance procedures are not intended to give an employee due process. After this meeting, Jackie and Bruce wonder why waste the time? Are they intended to be a placebo to trick people into thinking there is some fair mechanism to address wrongs by management against employees? They do not say this to the Treasury officials but discuss it between themselves later.	Grievance	
6/14/93	Jackie and Bruce return to their offices in Denver. No mention is made by the RTC or its management to the staff regarding their receipt of the award. This is unusual in that babies, local awards and other items of this type often are given some type of recognition by management in some official way.	Cavallo	Retaliation
6/16/93	All attorneys receive a monthly status report on pending RLIS matters (legal billings). These reports also go to the AGC and management where they are closely scrutinized. If management sees any problems they will criticize the attorney in question. The attorney must ensure that the processing of legal bills and budgets is flowing smoothly and the reports show the status of these matters including any problems. In the previous month (May, 1993) Jackie received a report with only four matters with problems. This was a very good report. In June she is given a report which shows 23 stale matters (some dating from 1981 before Jackie was at the RTC). This is not a good report. These matters had been entirely new to Jackie's report and had not shown up on any previous reports. By the rules, this should not have happened. No attorney is authorized to transfer a matter to another attorney's report without talking to the accepting attorney first. No one had talked to Jackie about any transfers. When the RLIS manager was informed about this by various persons in Jackie's unit the situation escalated into a problem with the RLIS manager suggesting in writing that somehow this was Jackie's fault. In one of the first emails exchanged, however, the RLIS manager did note that problem might have resulted if "Washington made an erroneous mass transfer".	Retaliation	
6/19/93	Jackie writes to the head of the EEO office to remind her of Jackie's previous communications and requests for documents due to her as part of the EEO process. Even with all the promises, the requested information had not been forthcoming for a number of months. She reminds the EEO office that the matters had been pending for a very long time and many of Jackie's witnesses had left the RTC. She tells the EEO officer of the RTC's pattern of never responding to her with required or needed information in a multitude of areas and expresses the hope the EEO office is not about to embark on this pattern.	EEO	Retaliation
6/23/93	Jackie is contacted by the Washington EEO office requesting information related to her EEO complaints. Jackie has still not received the written information she has been requesting since early April.	EEO	Retaliation

Date	Description	Category	Croase-Reference
6/28/93	The AGC initiates a series of meetings with Jackie and Bruce to "move things forward positively." Both Jackie and Bruce attend several meetings. One on one meetings are strange. Sometimes they are very strained, other times they are not. Several troubling things arise from the meetings. The AGC expresses to both Bruce and Jackie that she believes they are not solely, but are primarily, responsible for the low morale of the Denver legal office. She tells Jackie that she would not be comfortable having her report directly to the AGC since they don't trust each other. This effectively blocks Jackie from being selected for the pending Senior Counsel slot. Another very unsettling event might have arisen from these continuing discussions. Bruce tells the AGC that he admires Mahatma Gandhi. He has also noted this in his written acceptance speech for the Cavallo award. In July a national news reporter tells Bruce and Jackie that the Press Secretary for the RTC had told the reporter that "Bruce Pederson thinks he is Gandhi." The implication is that Bruce is mentally unbalanced. This slanderous and contemptible remark could only be based upon either the Bruce's comments to the AGC or Bruce's written (not oral) acceptance speech which was distributed in limited quantities at the award ceremony. No one from the RTC of which we know attended the award ceremony, even though several were invited.	Retaliation	Slander
6/29/93	The EEO office writes to Jackie to state that they are "finalizing" the Acceptance Letter for your complaints. (This in connection with the informal complaint filed in December, 1992). He again asks for more information, some of which Jackie can immediately provide, some of which he must get from the Denver RTC Legal Administrative unit.	EEO	
6/30/93	The Chairman of the House Subcommittee on Civil Service writes to the RTC on behalf of Congresswoman Schroeder asking the RTC to turn over the documents responsive to Congresswoman Schroeder's 1-21-93 request of the RTC. This requested information related to the reorganization of the 1992 RTC PLS program.	Congress	
7/2/93	Jackie receives email from EEO office which just reiterates that the documents will be sent to Jackie as soon as possible.	EEO	
7/6/93	Jackie writes to the EEO office and responds to their requests for information from Jackie. She also tells them of a recent conversation with the AGC wherein the AGC has told Jackie that the AGC would not be able to have Jackie reporting directly to her since they did not trust each other. 1-19 Jackie would not be selected for the Senior Counsel slot for which she has already been interviewed (in late May). Jackie wants to include the failure to be selected for this job in her EEO complaint.	EEO	

Date	Description	Category	Cross-Reference
7/8/93	Jackie learns from an RTC employee in Texas that she is not listed in their email directory, thus she cannot be reached by computer from Texas. A Texas RTC employee investigates why she is not on the directory but other Denver legal employees are and is told that only Washington ISU can update information on the network and they must have been updating at that time. The next day Jackie is on the Texas email server.	Retaliation	Computers
7/15/93	EEO writes to Jackie to state they have obtained the information Jackie could not provide to them directly on the SWAT and LRT positions in Denver.	EEO	
7/16/93	Jackie requests to go on leave without pay status for the maximum amount of time able to be authorized by the Denver AGC. This leave is granted. Jackie's leave commences Monday, July 26 and she is scheduled to return Monday September 27. Her stated reasons are several but primarily relate to the severe harassment she has received at the RTC since the putback of May 7, 1992.	Retaliation	
7/16/93	On or about this date a national news reporter tells Bruce and Jackie that when discussing problems related to the RTC, the RTC Press Secretary tells the reporter in a very nasty fashion that "Bruce Pederson thinks he is Gandhi" and suggest the reporter go ask Bruce about this. The statement is a slander against Bruce's mental health and is vicious. Bruce and Jackie have frequently heard from reporters and others about hostile and slanderous comments made about Bruce and Jackie by the Press Spokesperson, the Acting General Counsel, the Denver AGC's, the Denver PLS Section Chief, the Denver Deputy Attorney/Senior Counsel, the Denver Managing Attorney/Senior Counsel, the RTC Congressional Liaison Office and other senior RTC managers. These comments included slanders allegedly calling us liars, poor lawyers, misfits, malcontents, lazy, trouble makers, expletives, female body parts, and other derogatory names and labels, too numerous to list. We had heard about these slanders from numerous people all over the U.S. who had no reason to lie to us about them. Now the RTC appeared to be trying to paint us as mentally incompetent and hallucinatory to a national reporter, no less.	Slander	Retaliation

Date	Description	Category	Cross-Reference
7/20/93	<p>The GAO report on the PLS reorganization is distributed to RTC legal management. Jackie and Bruce find out it has been released when the AGC gives them a copy. The report substantiates many of the problems Bruce and Jackie predicted would occur and was silent on several of the issues. As Jackie and Bruce predicted, the GAO found no smoking guns detailing political motives. As Jackie and Bruce had said in their rebuttal statement from the 10-1-92 hearing, that type of evidence rarely exists, except in movies. The report is in milder language than Bruce and Jackie would like to have seen, but it nonetheless it painted a picture of a wasteful, unnecessary and un-thought-out reorganization. It certainly does not support the RTC's 10-1-92 Senate testimony that the PLS program was improved by the 1992 reorganization nor does it support the background comments of the present RTC legal management that the Beatty era PLS was in a shambles thus in need of reorganization. As has occurred in the past, the RTC Press Spokesperson loses no time in attempting to publicly discredit Bruce and Jackie. He once again makes nasty and hostile comments to the press about Bruce and Jackie -- for the record.</p>	Announcement	
7/21/93	<p>Bruce appears on Maria Shriver's prime time television news magazine, "First Person" regarding privacy rights in the workplace. The RTC Press Spokesperson had also been interviewed for this program. The program presented the situation involving the breaking of Bruce's computer. Most viewers who spoke with us (especially those from the RTC or involved with RTC) expressed to us that the Press Spokesperson did not acquit himself in a positive fashion on the show. Also, when interviewed about the breaking, he attempted to leave the impression that it was all the idea of the Denver AGC. This was a false impression if previous statements by the RTC press office are to be believed. They had already admitted it was ordered by the RTC Acting General Counsel.</p>	Whistleblowing	
7/23/93	<p>The GAO sends Bruce and Jackie their copy of the GAO report on the reorganization of the PL/Sand thank them for their help.</p>	Investigations	
7/27/93	<p>Jackie and Bruce receive an email from the RTC Press Spokesperson commenting upon Jackie's quote in the Rocky Mountain News. In response to remarks made to the reporter by the Press Spokesperson, Jackie stated her opinion that the Press Spokesperson often made hostile comments and not well thought remarks when asked about Bruce and Jackie. Jackie was responding the Press Spokesperson's very hostile quotes about her and Bruce being repeated by the reporter and also was thinking about the recent slanderous and cruel quotes he had made to a national news reporter concerning Bruce "believing that he was Gandhi." In the email from the him to Bruce and Jackie, the Press Spokesperson professes that "there is absolutely no hostility on my part. I just stick to the facts." He goes on to state that he was sorry he missed meeting us in Washington D.C. but that Bruce did not have to stop by to meet him. They had already met "several years ago" when he (Bruce) was a less well known, relatively standard attorney at the FDIC."</p>	Retaliation	Slander, Press

Date	Description	Category	Cross-Reference
7/29/01	Rtuce submits a FOIA report to secure any OIG report on the reorganization of the PLS	FOIA	
8/11/01	On Sunday late in the morning the EEO hearing examiner calls Jackie to schedule the investigation of her EEO formal complaint. Jackie is surprised that he is conducting RTC business of this nature on a Sunday morning. She asks him to call her on a different day as she was sleeping when he calls. He is insistent that he needs to talk to her immediately about this. She then asks him to call back later in the day, which he does. When he calls again Jackie objects to the fact that the RTC has allowed this matter to languish for many months, despite her multiple inquiries about moving it along. Now, when Jackie is home on leave without pay because her counselor has advised her to remove herself from the constant abuse heaped upon Jackie by the RTC, the RTC wants to commence the time consuming and debilitating hearing. Jackie tells the EEO examiner that according to the EEO directives she has the right to prepare for the EEO proceedings during RTC working hours and that she does not want to participate in this EEO process while on leave without pay status Jackie asks the examiner to seek an extension from the RTC EEO office until after Jackie returns from her unpaid leave. The examiner asks Jackie what she will do if the RTC refuses the extension and dismisses the EEO complaint based upon Jackie failing to pursue it while she is on leave. Jackie says if that happens, she will just file her claims in federal district court since it has been over 120 days since she filed her formal complaint with the RTC EEO office. Jackie also tells him that she intends to discuss this entire matter the next day with her counselor who had advised her to take this time away from the RTC. The next morning, he calls back and says that the RTC has granted an extension until 9/29/93 (which is two days after Jackie is scheduled to return to work).	EEO	Retaliation, Harassment
9/01/01	Jackie receives a letter from the head of the RTC EEO office telling Jackie that while her request to the EEO examiner to delay the EEO investigation had been approved by the examiner, the examiner was not authorized to grant further extensions without approval from the EEO office. It informs Jackie that the investigation must commence 9/27/93 which is the day that Jackie is to return from her unpaid leave.	EEO	

EXHIBIT 4

OFFICE MEMORANDUM
RESOLUTION TRUST CORPORATION

MEMORANDUM TO: BARBARA A. SHANGRAW, ASSISTANT GENERAL COUNSEL
FROM: BRUCE J. PEDERSON, COUNSEL
DATE: MAY 6, 1993

USE OF CORPORATE FACILITIES

I am responding to your memorandum of April 26, 1993 concerning my use of corporate facilities.¹ A copy is attached as Exhibit "A." Your memorandum purported to confirm the contents of a conversation we had in your office on April 23, 1993 regarding your clandestine review of my WordPerfect files and further warned me of potential disciplinary action if I used any corporate facilities for personal matters in the future.

Three major subjects need to be addressed: (1) your unauthorized entry into my computer; (2) general use of corporate facilities by RTC employees; and (3) morale within the office. I also wish to notify you that your ill-advised search may have violated various criminal statutes, my constitutional rights, and important public policies. At a minimum, your search creates the appearance of heavy-handed retaliation against a whistleblower.

I. Your Unauthorized Entry Into My Computer

Based on several sources, including your own words, I understand that you secretly gained access to my computer WordPerfect files without my consent sometime on or about March 12, 1993.

A. FACTUAL BACKGROUND

What follows is my full and complete understanding of events.

1. The Catalyst

Your break-in was allegedly triggered by an electronic mail message ("E-Mail") which I wrote on February 24, 1993. According to you, it was found lying on a printer somewhere in the Denver Legal Division office. My E-Mail, attached as Exhibit "B," attempted to provide current information regarding the future of the RTC to several fellow employees. It also criticized the bonuses received by RTC management and summarized congressional testimony given by then CEO Albert Casey regarding his proposals for abolishing the RTC by the end of 1993. The timing of the closing of the RTC is a subject of great concern to agency employees as they face the arduous task of finding new jobs with FDIC or elsewhere. The recipients of this E-Mail were all too familiar with the experience of unexpectedly losing their jobs. Each recipient had been ousted from the RTC in May of 1992 and temporarily "put back" to the FDIC last summer. My E-Mail had an attachment entitled "Casey3.Mis." It consisted of two articles published by the Bureau of National Affairs, Inc. ("BNA") regarding CEO Casey's testimony. A copy appears as Exhibit "C."

An employee you have not identified retrieved the E-Mail from the printer and brought the copy to your attention. You then forwarded it to someone in the Washington, D.C. RTC Office. I assume that the person was a member of senior management in your reporting line (*i.e.*, an Associate General Counsel or the Acting General Counsel).² You then allegedly received instructions from Washington, D.C. to access my computer and its WordPerfect files.

2. The Break-In

Your clandestine operation into my computer began with your E-Mail dated March 12, 1993. It was sent to John Waechter, a computer services employee ("Information Services Unit" or "ISU"). Based on alleged instructions from Washington, D.C. headquarters, you directed him to enter my computer and directly copy into your computer all of my WordPerfect files and directories. A copy of your edict is attached as Exhibit "E." Fearing for his job, Mr. Waechter reluctantly complied with your request.

¹I actually received your memorandum sometime mid-afternoon on Tuesday, April 27, 1993.

²On April 27, 1993, I sent an E-Mail to Acting General Counsel Richard Aboussie asking whether he was the person who instructed you to enter into my computer. He received and ostensibly read my E-Mail the following day. To date, he has yet to send a reply. Copies of my E-Mail and the confirmation of receipt are attached as Exhibit "D."

At the time you initiated your unauthorized search of my computer, it contained correspondence, memoranda, and other communications with the RTC Office of Inspector General ("OIG"), the U.S. General Accounting Office ("GAO"), and key congressional officials with oversight jurisdiction over RTC operations. These items were generated at their request and in conjunction with official inquiries into RTC programs and use of appropriated funds.

At no time was I ever consulted about my E-Mail, dated February 24, 1993, or asked for my consent to your invasion of my computer. In addition, you *never* took the simple step of asking me for a copy of the attachment to the E-Mail which so captivated your interest.

3. Ensuing Investigations and Reprisals

After your unauthorized entry into my computer, the RTC OIG opened an official investigation into the propriety of your actions and the instructions you received from Washington, D.C. Word of the OIG investigation somehow reached you. Your response was to attempt to have Mr. Waechter fired for allegedly notifying me and Jackie Taylor of your break-in. You further accused him of being a "friend" of ours. I understand that your initial efforts did not meet with success insofar as Mr. Waechter's supervisors, RTC employees who are not part of the Legal Division in Denver, do not report to you. They also may have recognized the impropriety of terminating an employee during the pendency of an official OIG investigation regarding this matter. Nonetheless, I believe that you are continuing your efforts to seek Mr. Waechter's termination.

4. Our Meeting

On April 23, 1993, I was summoned by your secretary to report to your office at 3:00 P.M. She would not tell me what was on your agenda. I reported as requested and joined you and Senior Counsel Ellis Merritt in a meeting that lasted approximately 20 minutes. Mr. Merritt appeared to function as a witness for you.

Once we were seated, you advised me that the subject of the meeting was my use of corporate facilities. You told me, for the first time, that you had entered my computer WordPerfect files and found several "personal matters." This caused you to seek my assurances that I would not use RTC computers for personal matters in the future. When I asked for examples of the personal items in question you provided three vague references. These were a Freedom of Information Act ("FOIA") complaint, "letters to friends," and "something about a town home."

Using the scant information you volunteered concerning what you read in my WordPerfect files, I attempted to explain why I thought there was a business nexus with these items. For example, the FOIA complaint was prepared (and filed) in an effort to obtain documents relevant to my pending grievance which had languished at the hands of the RTC since August of 1992. Letters to friends likely included senior FDIC officials who I consider to be friends and with whom I stay in touch regarding RTC operations and potential FDIC job opportunities should RTC recommence its "put back" program for GG employees. I don't believe that we came to any agreements as to what constitutes "personal" in this case. I agreed that if I was uncertain in the future, I would consult with my supervisor (Michael Nelson) or his supervisor (Mr. Merritt).

At the meeting, I asked you what authority entitled you to enter my computer WordPerfect files without my consent. You replied, "managerial prerogative." I expressed concern over privacy issues triggered by employer searches of employee offices and referred to legal research I performed while previously employed at the OIG at the U.S. Department of Commerce. You responded by volunteering that the U.S. Attorney's Office in Washington, D.C. had approved your search of my computer.³ I concluded my comments by suggesting that Messrs. Nelson and Merritt simply ask me for access to my computer the next time you had an interest in its contents.

B. LEGAL AND POLICY ISSUES

Your invasion of my computer WordPerfect files raises a number of serious legal issues. Criminal statutes designed to prevent illegal wiretaps may have been violated. My Federal and State constitutional, statutory, and common law privacy rights may have been breached. At a minimum, public policies for enhancing effective oversight over RTC operations clearly were contravened. Criminal penalties, civil liability, and administrative action could result.

³I do not know what fact patterns were used to arrive at their conclusions and whether their input was reduced to writing.

1. Criminal Statutes

The major Federal wiretap law, Title III of the Omnibus Crime Control and Safe Street Act of 1968,⁴ was amended in 1986 by the Electronic Communications Privacy Act of 1986 ("ECPA") to cover computers and electronic mail.⁵ The ECPA was intended to protect electronically stored communications from unauthorized access and dissemination. Unless you somehow qualify for one of the law's exceptions, your conduct may have violated this statute.

The exceptions found at 18 U.S.C. § 2701(c), or in pre-ECPA case law, do not appear to condone your search.⁶ In general, such exceptions are narrowly construed by the courts so as to preserve the protective intent of the statute. In addition, your search was not done with my consent or pursuant to an appropriate warrant, subpoena, or court order. Application of the "employer-owned systems" exception to your search would gut the legislative intent of the ECPA, ignore key legislative history, and abuse the likely purpose of the exception (i.e., permit retrieval of stored communications that were maintained for back-up purposes only). The "property protection" and "business extension" exceptions also seem intended for vastly different circumstances such as narrow employer intrusions by appropriate officials designed to deal with suspected employee theft, abuse or sabotage of computer systems, hardware and software performance, and quality control checks.

Even if your search arguably qualified for any of the foregoing ECPA exceptions, its scope was so broad as to extinguish the entitlement to the exception. Court cases approving employer intrusions into employee privacy have done so when the employer's legitimate search was carefully limited. Thus, searches upheld by the courts have focused on transactional information (sender and receiver identities; communication patterns) rather than the contents of the communications. In this case, assuming you could legally search my WordPerfect (P:) directory for the "Casey3.Mis" attachment, you could only do so legally if you avoided perusing the other documents in my computer.

2. Civil Prohibitions

It is beyond the scope of this memorandum to fully set forth all of the potential civil liability arising from your invasion of my computer. Numerous constitutional provisions, statutes, and common law theories are involved. Nonetheless, preliminary legal research and facts known to me at present support a persuasive case that my constitutional and civil rights were violated by your conduct. Your intrusion into my computer files does not appear to have legal support when key factors such as notice, consent, justification and scope are considered.

It is worthwhile to focus on the supreme law of the land, the U.S. Constitution. The Fourth Amendment affords me protection against unreasonable searches and seizures. Several cases evaluating the propriety of employer searches have found that public employees may have privacy interests in their physical offices and in their words, both oral and written, which are used in telephone conversations, correspondence, and other forms of communication. Evaluating each case on its facts, the courts have attempted to balance an employee's legitimate expectation of privacy against the reasonableness of the employer's search. In applying that test, the U.S. Supreme Court held that government employees retain protection against unreasonable searches and seizures by governmental supervisors. *O'Connor v. Ortega*, 480 U.S. 709, 107 S.Ct. 1492, 94 L.Ed.2d 714 (1987).

It is telling to evaluate your conduct using the factors employed by *Ortega* and its progeny. Three pivotal factors emerge: (1) were the privacy expectations of the employee reasonable; (2) did the employer have a reasonable basis for initiating the search; and (3) was the employer's search reasonable in scope? The facts known at present fully support the conclusion that you and the person instructing you to invade my computer violated my constitutional rights. Your ill-advised search trampled into an area of high privacy expectations. You did this without a legitimate purpose and with nonexistent limits. In short, you conducted a retaliatory "fishing expedition." Consequently, any information that you did seize pursuant to your improper search is tainted. I expect that you are familiar with the "fruit of the poisonous tree" doctrine found in search and seizure cases.

(a) My Privacy Expectations

My high expectation of privacy regarding the contents of my computer was reasonable. Numerous factors contributed to that belief. These include the computer

⁴ 18 U.S.C. §§ 2510-20.

⁵ 18 U.S.C. §§ 2701-11.

⁶ See, Turner-Baumhart, *The Employer's Right to Read Employee E-Mail: Protecting Property or Personal Prying?* 8 Labor Lawyer 923, 925-929 (1992).

system itself, the absence of publicized RTC policies regarding computer eavesdropping, and statements to you regarding my expectations.

Several features inherent to my computer support an expectation of privacy. First, I need a password to access my computer. It is known only to me and the ISU office. By design, you do not have it. Second, my computer keyboard features a "delete" function which allows me to eliminate material prior to review by another person. Third, a message appears on my computer screen each time I sign on notifying me that "unauthorized access" to the computer is prohibited by public law (copy attached as Exhibit "F"). In fact, I am to report access without my consent to a "security officer." Fourth, I have private WordPerfect files for my own use. Once a document is typed, I can store it in a secure file which only I can access (e.g., P: drive or A: drive, or it can be placed in a communal file (J: drive). Indeed, when I log in, my screen tells me that the P: drive is "private." A copy appears as Exhibit "G." Finally, government ownership of the computer itself does not preclude employee expectations of privacy.⁷

RTC policies and work place procedures do not erode my high privacy expectations regarding the contents of my computer. The RTC has never published and disseminated a comprehensive agency-wide computer monitoring and search policy to its employees.⁸ Nor has the agency asked me to sign any kind of waiver regarding the privacy of my computer's contents. I never gave any actual or implied consent to your intrusion. Indeed, I had no inkling that your covert conduct could occur based on the facts involved.

Conversely, Jackie Taylor and I repeatedly put you on notice of our privacy expectations regarding communications and files at work. On September 9, 1992, I sent you an E-Mail expressing concern over potential physical and electronic surveillance. Your reply denied any personal knowledge of eavesdropping but failed to address RTC policies in this area. On October 9, 1992, Jackie Taylor sent you an E-Mail reflecting our privacy interests in our files. This was done in response to suggestions from Mr. Bernard Brodsky that he was going to visit our offices (then in exile across town from you) and search through our files for PLS-related materials. We never received a definitive reply from you laying out what areas were subject to warrantless searches (i.e., our computer WordPerfect files). These E-Mails are attached as Exhibit "H." In short, we went on record regarding our privacy expectations. You did not.

In February you had another opportunity to warn us that you somehow had legal authority to search our offices or their contents at any time. When I pressed the privacy issue of why our mail was opened and screened, even when marked "personal and confidential," you had Mr. Merritt send me RTC Memorandum #92-MG-06 which provided that mail addressed to RTC employees (except certain offices such as the Investigations Department) was subject to being opened in an effort to retrieve cash and negotiable instruments.⁹

The RTC had yet another chance to comment on employee privacy expectations in connection with a Freedom of Information Act ("FOIA") request which Jackie Taylor and I submitted on September 12, 1992. Copies of the initial request and our appeal are attached as Exhibit "I." On two occasions, the agency responded to our request by stating that no information existed regarding any physical, electronic, or telephone surveillance that had been conducted on us. These replies are attached as Exhibit "J."¹⁰

Finally, it is worth mentioning that a law enforcement agency likely supports the reasonableness of my privacy expectations. Although I do not pretend to speak for the RTC OIG, it is my understanding that the OIG takes the position that search warrants are required before OIG Special Agents can access RTC employee computers.

⁷Privacy interests protected by the Fourth Amendment do not turn on the ownership of the premises or equipment. The Fourth Amendment protects people, not areas. *Rakas v. Illinois*, 439 U.S. 128 (1978); *Katz v. United States*, 389 U.S. 347 (1967).

⁸The RTC Directive Circular you provided, entitled "Microcomputer Security Policy," is analyzed separately in Section II-D of this memorandum. The Circular fails to offset all of the computer system features which promote an expectation of privacy.

⁹It was never explained to me why a personal letter unrelated to RTC business would necessarily contain cash, and if so, why the RTC would claim ownership of the money. Nonetheless, assuming a compelling need to verify contents, I was never told why having a mail room employee witness my opening of personal mail addressed to me would not be acceptable.

¹⁰The final denial by the RTC, dated April 16, 1993, raises the interesting issue of how the agency could still maintain that no responsive records were in existence when your E-Mail of March 12, 1993 directing the break-in had been in existence for over a month.

(b) Reasonable Basis for Your Search

Unless you withheld information from me in the April 23, 1993 meeting, your stated basis for invading my computer without my consent was the E-Mail I wrote that was found lying on a printer somewhere in the office. The contents of the E-Mail did *not* furnish you with a reasonable justification for conducting your unauthorized search of my WordPerfect files. I merely exercised my First Amendment rights regarding work-related issues. Your irritation with my E-Mail, either because it was contrary to management's "party line" or disclosed information that you wanted to suppress from rank and file employees, was a poor excuse for what you did.

Ortega teaches that my E-Mail had to prompt your search either for reasonable non-investigatory work-related reasons or for investigatory work-related reasons. Your explanation fails to satisfy either prong. Non-investigatory work-related searches usually occur when an employer needs to obtain a document, pertinent to the agency's business, from an employee's office when the employee is absent. In this case, my E-Mail and its attachment were not documents vital to your conduct of RTC business. Moreover, you already had the E-Mail in your possession. If you wanted a copy of the attachment, all you had to do was ask me or one of the recipients. Instead, you waited several days before surreptitiously breaking into my WordPerfect files, a location for which I had a reasonable expectation of privacy.

With respect to an investigatory work-related search designed to uncover employee misfeasance, nothing in my E-Mail provided you with a reasonable suspicion that I was engaging in misconduct or incompetent behavior. The text of my E-Mail discussed congressional testimony by then CEO Casey regarding his proposal to stay on as CEO and phase out the agency. That subject is of great interest to all RTC employees and is regularly discussed in all kinds of internal agency documents. RTC management frequently distributes copies of testimony by CEO Casey and other agency officials (e.g., Acting General Counsel Richard Aboussie) to RTC employees. There is nothing inherent to this topic that raised a reasonable suspicion of misfeasance on my part. This is the minimum requirement which enables the government to prevail, when it does, in search and seizure litigation involving public employees.

The only other area that had to be of interest to you was the referenced attachment to my E-Mail. It was entitled "Casey3.Mis." On its face, the title hardly conjures up a sudden need to surreptitiously break into my computer WordPerfect file to find out what constitutes the attachment. In fact, as you later found out, the item was most benign. It consisted of two BNA articles regarding CEO Casey's congressional testimony. If you wanted to retrieve a copy, I would have gladly provided you with one upon your request. You would not have encountered any delays or potential legal exposure. I was not out of the office for any prolonged time between February 24, 1993, the day when I composed and sent the E-Mail, and March 12, 1993, the probable date of your break-in. In short, you had over two weeks in which to ask me for a copy of the attachment. You also could have asked any one of the six E-Mail recipients for a copy since they all received the attachment in question.

The implausible nature of your excuse for breaking into my computer also raises the issue of disparate treatment, otherwise known as retaliation. Why did you select my computer for a search when you could have obtained the pivotal attachment from any of the recipients' computers? Counting myself and the six recipients, there were seven people and computers you could turn to for the attachment.

On a broader reprisal front, one is compelled to pose several obvious questions. Have any other employees under your supervision been subject to secret computer searches? Were these based on a need to retrieve documents or reasonable indications of employee misfeasance? Conversely, have these or similar fact patterns *not* resulted in searches of employee computers? As discussed below in Section II-E, numerous examples of personal use of corporate facilities abound in our office. Does each instance result in a surreptitious search of the employee's computer? If not, why not?

In sum, there was no reasonable basis to single me out for an unauthorized search of my computer. Based on the four corners of my E-Mail, you had no plausible suspicion that you would find anything in my computer that would warrant the invasion you commissioned. In addition, if the attachment to the E-Mail was truly the focus of your interest, there was no reason why you could not simply ask me or one of the recipients for a copy. Your stated rationale is so weak that I am presumptively convinced that I was singled out for this unique form of retaliation.

(c) Reasonable Scope of Your Search

The scope of your search, reviewing all of my WordPerfect files, was irrational and overly intrusive. If your stated purpose for the break-in was to investigate my E-Mail because it somehow smacked of facility abuse, then you should have reviewed

my E-Mail mailbox. That was the clear nexus. Yet, by your own admissions in our meeting on April 23, 1993, you failed to do the logical thing. Instead, you claimed that your search was confined to my WordPerfect files.

If the attachment to my E-Mail was the basis and objective of your break-in to my WordPerfect files, then you should have asked me for a copy. That was the least intrusive option for dealing with an area fraught with privacy interests. This approach is the obvious course of action in a "good faith" and professional working environment.

Assuming there was a legal basis for entering my computer, you needed to confine your search to locating and copying the attachment labeled "Casey3.Mis." It was clearly labeled and easy to locate. There was no legitimate explanation for reviewing dozens of WordPerfect files, especially when the attachment proved to be so benign. Perhaps you were disappointed that you had failed to "get the goods" on me, and felt compelled to press on in the hopes of finding something you could use to trump up charges against me.

Beyond the U.S. Constitution, there are a full panoply of civil theories and remedies designed to address your conduct. These include Federal civil rights statutes,¹¹ whistleblower protection statutes,¹² civil portions of criminal statutes previously discussed, and common law torts governing invasions of privacy.¹³ In several instances, parallel provisions exist under Colorado law. Considerations of length prevent a fuller discussion of these topics in this memorandum.

3. Policy Considerations

Your invasion of my computer WordPerfect files compromised the integrity of important law enforcement and oversight work. It also gutted the agency policy of encouraging knowledgeable employees to come forward with concerns about waste, fraud and abuse without compromising the information or their employment status.

Your arbitrary intrusion into my WordPerfect files gave you access to materials I prepared and sent to key oversight entities. These included the RTC OIG, the U.S. GAO, the U.S. Senate Committee on Banking, Housing, and Urban Affairs, and others with official oversight responsibility over RTC programs and employees. Your review compromised the integrity of official oversight efforts insofar as these officials may not want their targets to have access to case sensitive information.

The RTC Acting General Counsel, Richard Aboussie, endorsed this position in his memorandum to all Legal Division employees on August 27, 1992. Attached as Exhibit "K," the memorandum requires agency employees to "fully cooperate" with RTC OIG investigations. It further warns that, "[g]iven the nature of OIG investigations, it is inappropriate to discuss the investigation with anyone other than the OIG representatives." You even issued a similar warning to our office in December of 1992, stressing the fact that "IG investigations are confidential." A copy is attached as Exhibit "L." You contravened Mr. Aboussie's memorandum and your own instructions by accessing materials pertinent to ongoing OIG probes without the authorization of the OIG.

Perhaps you see nothing wrong with this warped procedure given several incidents last summer when "personal and confidential" mail pertaining to Equal Employment Opportunity proceedings initiated by Jackie Taylor which involved you as a target were opened or reviewed by your managers. I liken this situation to feeding FBI counter-intelligence work to foreign government operatives.

In addition to directly threatening the work of oversight entities, your invasion of my computer also sends a disturbing "chilling effect" to RTC employees who may wish to report waste, fraud and abuse. Few, if any, employees will be willing to engage in this important activity if they are subject to some sort of retaliation, such as your search of their computers. Important sources of information will dry up in direct response to your intimidating actions. Exhibit "M" contains a letter to agency employees from the RTC Inspector General, John J. Adair, reflecting the importance of employee cooperation with OIG work. In addition, Mr. Aboussie's memorandum, attached as Exhibit "K," implements these policy concerns in the Legal Division by clearly stating that the Inspector General Act "prohibits any reprisal against any employee for disclosing information to the Inspector General."

Finally, your retaliatory conduct violates the admonitions of Senator Donald W. Riegle, Jr., the Chairman of the U.S. Senate Committee on Banking, Housing, and Urban Affairs. On August 11, 1992, Chairman Riegle repeatedly warned RTC officials about retaliating against me, Jackie Taylor and another whistleblower who tes-

¹¹ *E.g.*, 42 U.S.C. § 1983.

¹² At least two statutes may be applicable to RTC employees. These are 12 U.S.C. § 1831j and 12 U.S.C. § 1441a(q).

¹³ Examples include "intrusions into a person's seclusion" and "defamation."

tified that day. In his opening remarks, the Chairman stated that he would personally do everything in his power to ensure that the witnesses suffered no reprisals.¹⁴ Later, Senator Riegle noted that:

"[t]his committee will use every resource at its command to see to it that there are no reprisals at any time by anyone against you for speaking. . . . I assure you that there will be no invisible person in the bureaucracy that targets any of you that gets away with it. That just will not be tolerated by this committee. And anybody that attempts that will find that the full force of our efforts will be directed their way."¹⁵

Lest there was any doubt, the Chairman continued:

"You're not going to be left out there because anybody that targets you, I intend to target. We're just not going to have that. I don't believe in Government of that sort, of vindictive conduct and we're not going to have it directed at you."¹⁶

Senator Riegle concluded his remarks on this subject by requesting immediate notification of harassment.¹⁷ He also pointed to promises by CEO Casey and then FDIC Chairman William Taylor that there would be no reprisals.¹⁸ Last fall, Jackie Taylor and I provided you with a copy of these statements by Chairman Riegle.

Your search of my computer for no legitimate reason and your efforts to unfairly terminate Mr. Waechter all fly in the face of Chairman Riegle's blunt warnings and promises by CEO Casey. As such, your conduct is inconsistent with their positions and arguably breaches applicable whistleblower protection statutes.

II. General Prospective Use of Corporate Facilities

Your memorandum of April 26, 1993 expanded well beyond the subject of computer use that was addressed at our April 23, 1993 meeting. Without any predicate facts involving me, you further warned against the personal "use of corporate facilities in any fashion, be it . . . telephone, copy machines, typewriters, etc." (emphasis added). You attached copies of the following documents: 5 C.F.R. § 2635.704 ("Use of Government Property"); 5 C.F.R. § 2635.705 ("Use of Official Time"); RTC Directive Circular 1210.8 ("Disposition of Corporate Documentary Materials and Personal Papers"); RTC Directive Circular 1360.1 ("Microcomputer Security Policy"); and RTC Directive Circular 2410.1 ("Extensions of Credit").

Each document is discussed below. In general, I believe that I have substantially complied with these items.¹⁹ I intend to continue doing so. Moreover, several of these documents are irrelevant to this discussion or actually undercut your position by permitting personal uses of government equipment or facilities. I also consider your absolute position prohibiting personal use of corporate facilities "in any fashion" to be impossible to defend as a practical matter and a fiction in light of current practices which occur in our office.

A. 5 C.F.R. § 2635.704 ("USE OF GOVERNMENT PROPERTY")

This provision requires executive branch employees to protect and conserve government property by using it only for authorized purposes. I believe that I have exercised reasonable stewardship of the RTC equipment entrusted to me. I always have attempted to confine my major uses to business purposes. For example, I have never abused property by using franked envelopes or rental vehicles for personal business, nor have I operated a private business out of my RTC office.

I will admit to *de minimis* personal use of government property when I have made personal local telephone calls. Of course, that practice is condoned by the subject

¹⁴ Consolidation of the Professional Liability Section of the RTC Legal Division, 1992: Hearings Before the Senate Committee on Banking, Housing, and Urban Affairs, 102nd Cong., 2nd Sess. at 2 (August 11, 1992).

¹⁵ *Id.* at 36.

¹⁶ *Id.* at 67.

¹⁷ He stated, "I want you to keep me apprised and I want you to call me, I want you to come and see me at any time there's any indication that you're being harassed or not treated fairly, or that there's anybody else in an equivalent situation that you know about, because we're not going to stand for that, and it should never happen in any case." *Id.* at 67.

¹⁸ "I've gotten the assurance from Mr. Casey here in the flesh today, and from Mr. Taylor in writing, that there's not going to be reprisals. And I want to make sure that everybody lives up to their promises in that area." *Id.* Copies of the written promises are attached as Exhibit "N." CEO Casey himself testified that, "I want to assure the committee and everybody else, that certainly, there will be absolutely no retaliation against the witnesses, in any case . . . you have my personal pledge." *Id.* at 15.

¹⁹ The provisions from the Code of Federal Regulations, the "Standards of Ethical Conduct For Employees of the Executive Branch," became effective on February 3, 1993.

ethics provision.²⁰ I also have used office pens, pencils, paper clips and rubber bands when doing office projects at home on my own unreimbursed time. Conversely, I mistakenly commingled similar materials which were mine when I did office work at home. Needless to say, I have not kept a rigorous accounting of the whereabouts of these inexpensive materials. I am certain that I am not alone in these practices.

The examples provided to illustrate this C.F.R. provision demonstrate that absolute prohibitions are impossible or undesirable. Personal telephone calls and the use of word processors and photocopying machines are permitted in certain circumstances when restricted in volume or there is a shared interest in the activity between the employee and the agency.

B. 5 C.F.R. § 2635.705 ("USE OF OFFICIAL TIME")

Subpart (a) of this companion provision requires government employees to "use official time in an honest effort to perform official duties." I believe that I have honored that standard. In fact, the RTC has benefited from dozens of hours of uncompensated overtime that I have donated. A check of sign-out records at the security desk in our building will confirm the fact that I regularly put in nine hour days. On some occasions, I stay until 8:00 or 9:00 P.M. I also have invested time in some work-related projects²¹ after hours at home.

Your memorandum accused me of composing allegedly personal items in my WordPerfect file during business hours. You should know that the stated date and time in the WordPerfect directories is not always synonymous with composition. For example, if one accesses a document in order to remember its contents, it is possible to shortly thereafter exit that file and trigger the current date and time for when the review occurred. Neither would be probative for showing when the document was first created or substantially edited. In short, all your print out is capable of proving is when I last "looked" at a particular document.

Subpart (b) concerns use of a subordinate's time for inappropriate purposes. I do not believe that issue is relevant to recent events involving my computer. My present work duties in the Special Projects Section have not required me to make significant use of the support staff, much less ask them to do improper assignments. If anything, the inappropriate use of subordinates is an issue raised by your order to Mr. Waechter to enter and copy my WordPerfect files. Assuming your instruction was improper, then you may be in violation of this provision and subject to administrative action.

C. RTC DIRECTIVE CIRCULAR 1210.8 ("DISPOSITION OF CORPORATE DOCUMENTARY MATERIALS AND PERSONAL PAPERS")

This directive defines the differences between corporate records and personal papers. Although I presume you attached it to your memorandum because it deals with personal papers, the directive has little to do with use of corporate facilities for personal purposes.²² Instead, it governs how one type of personal property (*i.e.*, paper) is to be stored in an employee's office. All the directive requires is that corporate records be filed separately from personal papers. By now, I have achieved substantial compliance after restoring order to my files following the chaos engendered by four forced moves around downtown Denver between May of 1992 and January of 1993.²³

This directive actually undercuts your position that agency employees are not entitled to use corporate facilities for any personal use. The directive clearly takes notice of the blurred distinction between one's personal and work environments by approving employee use of corporate facilities (*i.e.*, offices) to retain private papers. It even provides approved examples such as materials relating to private affairs or outside business pursuits, professional affiliations, diaries, journals, and personal notes. By doing so, the directive recognizes the privacy interest inherent to private materials. It even goes so far as to suggest redaction of personal matters from official information when both appear in the same document.

²⁰ I have charged personal long distance telephone calls to my own credit card. This practice is condoned by the same directive you provided—5 C.F.R. § 2635.704(b)(2).

²¹ These pertain to relocation benefit paperwork, unpaid travel vouchers, and grievance assignments.

²² The directive also suffers from infirm draftsmanship. Its "Scope" in paragraph two is limited to "all Corporation employees upon separation." Thus, the language suggests that the directive is not binding on individual employees until they leave the RTC. I assume applicability to me for purposes of this memorandum.

²³ It also is worth noting that the directive did not become effective until after two of the moves you ordered. Consequently, I was forced to achieve compliance with a new policy after already sustaining two disruptive moves.

D. RTC DIRECTIVE CIRCULAR 1360.1 ("MICROCOMPUTER SECURITY POLICY")

This directive provides a security policy for RTC computers. I believe that I am in compliance with this pronouncement. The directive, however, fails to give you the authorization for your search of my computer. Certain portions actually increase employee expectations of privacy regarding computers while other sections that vaguely refer to monitoring fail to offset those heightened expectations. In addition, Directive Circular #1210.8 concerning personal papers further erodes agency efforts to suggest that employees have no expectations of privacy regarding their computers. After all, if an employee can store personal information in RTC offices, why not in RTC computers?

Directive Circular #1360.1 inflates employee privacy expectations regarding computers in several ways. First, the numerous security tips create the impression for the employee that computers are highly protected means of storing information. There are admonitions concerning secure communication linkage, log off practices, access control mechanisms, passwords, screen viewing and unauthorized persons. Second, the directive creates a system of "computer police" known as the Office of Corporate Information ("OCI") Security Unit. There also are ADP Security Officers created in individual offices to ensure security for computers.

At the same time, the directive fails to warn employees that their computers may not be private storehouses of information. There only are brief references to enforcement of the directive in paragraph seven entitled, "Assurance Procedures." Subpart (b) merely says that "each Division/Office ADP Security Officer will continuously monitor, and OCI will randomly monitor compliance with microcomputer security policy." Nothing is said about actual search procedures for employee computer WordPerfect files. Under what circumstances will searches occur? Who will do them? Will the employee be notified in advance and asked for consent? This is a far cry from the ideal: a comprehensive policy statement disseminated by an employer to all employees defining the circumstances under which monitoring of computer contents will occur. The employer's authority and methods should be defined so that the privacy expectations created by passwords and other security measures are tempered.

The final issue created by the directive governing computer security is whether you had authority to order the search of my computer. Given the directive's warning that each employee is only to access data and systems they are authorized to enter as well as provisions for "computer police" jurisdiction and reporting of policy violations to these security officers, your role in searching my computer may have violated this very directive. OCI officials or security officers should have ordered and conducted any permissible searches.

E. RTC DIRECTIVE CIRCULAR 2410.1 ("EXTENSIONS OF CREDIT")

This directive appears totally irrelevant to use of corporate facilities. It pertains to extensions of credit from prohibited creditors. I hereby deny any accusation that I have ever obtained credit from improper sources. The Ethics Office never has objected to the contents of my financial disclosure forms.

F. INCONSISTENT ENFORCEMENT OF YOUR IMPOSSIBLE POSITION

Your absolute prohibition on all personal use of corporate facilities is a fiction. Such an approach is unrealistic, undesirable because enforcement would severely reduce employee morale, and not contemplated by RTC directives.

The dissent to the *Ortega* case provides a thoughtful explanation of why it is impossible to neatly separate office business from personal affairs.²⁴ "It is, unfortunately, all too true that the workplace has become another home for most working Americans. Many employees spend the better part of their days and much of their evenings at work." *Id.* at 1509. As a result, the private lives of employees must intersect with the workplace when personal matters are handled at the office.

No wise manager would seek to ban all personal use of corporate facilities. Astute employers typically permit certain employee activities which are more personal in nature than totally work related. These make the work environment more enjoyable and productive. Social functions which serve to bolster employee morale but which do not produce tangible work are a good example. For that reason, realistic employers allow, if not encourage, employees to celebrate birthdays and other special events (baby showers, Christmas holiday season, etc.) with decorations and appropriate ceremonies. The recent birthday decorations in the work areas for Paulyn Foster and Francine Ramirez are good examples. In April, one of the conference rooms was used for a baby shower. Other examples include bake sales, the office

²⁴ *O'Connor v. Ortega*, 107 S.Ct. at 1509-10. Joining the dissent authored by Justice Blackmun were Justices Brennan, Marshall, and Stevens.

improvement committee, pot luck lunches, and personal notices on office bulletin boards. Most, if not all, of these events are planned or set up on "company time" and consume official work space.

Employees also are permitted to bring in personal objects such as plants, family pictures, and other decorations although none of the foregoing serve any clearly measurable business purpose and may actually take up space on office furniture that could be used for more work-related purposes such as stacking documents. Your office is no different from any other RTC employee's office. It, too, contains personal objects such as art work, plants, and mementos.

Finally, it bears mentioning again that certain of the directives attached to your memorandum support the position that certain personal uses of government facilities or equipment are acceptable. These include personal telephone calls using RTC equipment and storage of personal papers in RTC offices.

III. Office Morale

Your memorandum asserts in closing that office morale stands to suffer when some employees are allowed to violate agency directives and others are not. You refer to equal treatment for all.

These comments are ironic at best. Your own conduct contradicts your position by reinforcing the popular perception that a double standard rules the Denver Legal Division office. Management can do as it pleases. It can rummage through an employee's computer files, whether or not the search is legal, consistent with agency directives, or moral. Employees in disfavor, however, are held to hyper-technical enforcement of "rules" as it suits management's ulterior agendas.

More importantly, a telling case can be made that poor management practices are the single greatest cause of low morale at this field office. Indeed, your conduct since May of 1992, both as a "Transition Team" member and then as Assistant General Counsel for the Legal Division at this site, has substantially eroded employee morale.

Since the disastrous reorganization, all Legal Division employees, professional and support staff alike, have lived in fear that any action on their part that might displease you or your subordinate managers would result in punitive treatment. The infamous "put back program" was eloquent evidence that those in arbitrary disfavor stand to lose their positions and reputations for no objective performance-related reason. Subsequent promotion and administrative practices have reinforced that perception. Not a single former "put back" has been selected for a management position despite at least five vacancies since last November. The example you made of me and Jackie Taylor with forced moves, physical exile from the building, and reductions in duties and responsibilities was not lost on our colleagues in the office. Meanwhile, a patronage system appears to function wherein those in favor who still remain in-house are promoted and popular "alumni" in private practice are rewarded with lucrative legal work.

Your latest error in judgment, if I may be charitable, is your invasion of my computer. It is easy to predict a severe setback in office morale when employees learn that management has broken into a colleague's computer without a reasonable basis.²⁵ Privacy is a bedrock interest of great concern to all citizens.²⁶ Can unfounded surprise searches of desk drawers, credenzas, cabinets, purses, and briefcases be far behind?

IV. Conclusion

Since joining the RTC in Denver in March of 1991, I have been progressively maligned by those intent on conducting a "turf war" within the Legal Division. I endeavored to defend myself and my program (Professional Liability) with the truth. Those efforts were met with your "put back" decision last May, second class treatment throughout the summer, and overt retaliation since my testimony before the U.S. Committee on Banking, Housing, and Urban Affairs. I took those events in stride reconciling myself to the reality that insecure people cannot tolerate respectful dissent and competing views on policy matters. My goal, throughout these many months, was to assist interested parties with the task of rebuilding the RTC after the disastrous reorganization of 1992.

²⁵ Recent newspaper accounts of concern expressed by Rep. Patricia Schroeder are attached as Exhibit "O."

²⁶ "The employer-employee relationship is a special and fundamental one in our society and no other relationship, except perhaps marriage, preoccupies daily affairs so completely." Decker, *Employment Privacy Law for the 1990s*, 15 *Pepperdine L. Rev.* 551, 554 (1988). Indeed, several commentators believe that "privacy may be the principal employment law theme of the 1990s." Howe, *Minding Your Business: Employer Liability for Invasion of Privacy*, 7 *The Labor Lawyer* 315, 317 (1991).

The most recent example of retaliation, your invasion of my entire WordPerfect files for no legitimate reason, is *not* something I am willing to overlook. Criminal statutes, civil liberties, and important public policies are all involved. The invasion of my computer occurred under a set of facts that are highly unfavorable to you: no pre-existing RTC computer eavesdropping policies, no steps to reduce my expectations of privacy, a full scale "fishing expedition" without reasonable basis or defined scope, and an extensive track record of retaliation against me for my whistleblowing activities. Your superior sullied himself and the agency with the break-in order; you did yourself no favors by blindly obeying it. A lawyer, as an "officer of the court," knows better than to issue or implement potentially illegal or improper orders.

EXHIBITS

"A" through "Q"

MEMORANDUM 00: Bruce Pederson
Counsel

FROM: Barbara A. Shangraw *BAS*
Assistant General Counsel

DATE: April 26, 1993

SUBJECT: Use of Corporate Facilities

This memo is to confirm the conversation we had on April 23 which addressed your use of corporate facilities for personal use. I discussed with you the basis for my concern that you were using the computers for your personal use, i.e. the E mail which referenced Mr. Casey and was found at a printer and brought to my attention. We also discussed the personal items that I then found on your directory including a personal letter in which you gave out the 800 number for this office so that your friends could call, a letter that relates to personal business regarding your townhome, your FOIA complaint, etc. The time at which you composed some of the matters also shows that you are using business hours to conduct personal business.

We discussed in our meeting the issue of what is considered personal and you agreed that if there was a question in your mind of whether you consider something personal in nature, you would raise it with your Section Chief or with Ellis Merritt. Please note that your use of corporate facilities in any fashion, be it computers, telephone, copy machines, typewriters, etc. for personal use in the future could subject you to disciplinary actions. The use of these corporate facilities violates 5 C.F.R. Part 2635.704, RTC Directive Circular 1210.8, RTC Circular 2410.1 and RTC Directive Circular 1360.1. Attached are copies if you wish to read them again.

It is important to morale within the office to treat people equally. Since others are required to follow corporate policies and directives, it is difficult to manage any office if some are allowed to violate those policies.

EXHIBIT

A

To: Ted Aragon@Legal-Lit@RTCDEN
 Kriss D. Hogan@Legal-Lit@RTCDEN
 Jack Clough@Legal-Corp@RTCDEN
 Bettye V. Farmer@Legal-Lit@RTCDEN
 Georgia J. Dinsmore@Legal-Assats@RTCDEN
 Jackie Taylor@Legal-Assats@RTCDEN

Cc:

Bcc:

From: Bruce Pederson@Legal-Corp@RTCDEN

Subject: Casey Shanigans

Date: Wednesday, February 24, 1993 12:04:05 MST

Attach: CASEY3.MIS

Certify: N

Forwarded by:

Greetings fellow "Putback Alumni." Please print the attachment at your convenience. It contains information that RTC management DOES NOT want you to know. Casey testified yesterday before a subcommittee of the House Banking Committee. He lobbied to keep his job so he can make YOU unemployed by December. Meanwhile, he and his cronies in D.C. are rewarding themselves with over a million dollars in "bonuses" for their efforts to strip you of your job. What a bunch. Does anyone want to bet that Barbara S. will deny knowing anything about this travesty? I welcome your thoughts.

Bruce

(your eyes and ears back east)



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SECTION: REGULATION, ECONOMICS AND LAW; 35.

LENGTH: 1364 words

HEADLINE: RTC, CASEY WILL STAY ON IF CONGRESS AGREES TO SHUT DOWN AGENCY AT YEAREND

BODY:

Albert Casey, chief executive officer of the Resolution Trust Corporation, told members of a House Banking subcommittee Feb. 23 that he would withdraw his resignation and stay on at his post if Congress accepted his plan to shut down the agency at the end of this year.

Casey, who was responding to questions from Rep. Floyd Flake (D-NY), chairman of the newly formed Subcommittee on General Oversight, Investigations and the Resolution of Failed Financial Institutions, said that, in any case, he would remain at the RTC helm until a successor was found and confirmed to the position.

Casey's resignation, announced Feb. 17, is effective April 1 (32 DER A-16, 2/19/93). He plans to resume his teaching career at the business school of Southern Methodist University, in Texas in the fall.

"I could stay until the school term begins to handle any crisis," he said.

Casey, a Republican, is a political appointee, and says he expects to be replaced by the new administration with a Democrat. However, the subcommittee is considering whether it might be better to ask Casey to stay on an extra eight months to oversee the sunset of his agency.

The subcommittee chairman told BNA that any attempt to pass an RTC funding bill this session must include assurances to members that the agency will close this year and, therefore, will not be back to ask for more money.

The RTC has been without funds to pay for the sale of failed thrifts since Congress voted down a \$ 42 billion funding bill on April 1, 1992. Now, a revised estimate from the agency says \$ 25 billion will do the job.

However, recent scandals, such as the RTC's high-priced contract with Price Waterhouse for photocopying services, have exacerbated the problem of getting funding votes, Flake said.

"If there was a vote today, a funding bill could pass the Banking Committee, but it would not get through the whole Congress," Flake said.

What will make a difference, he said, would be to tell members that the RTC "will go out of business this year."



Daily Report For Executives, February 24, 1993

Not Everyone Believes in Early Sunset

This view of sunsetting the agency this year was not shared, however, by Rep. Charles Schumer (D-NY), a member of the House Banking Committee but not the oversight subcommittee.

While visiting the hearing, Schumer said that it might be a terrible mistake to either scrap the agency and start a new one--as Rep. Bruce Vento (D-Minn) has suggested--or follow through on any fixed termination date. The RTC is required by law to shut down by Dec. 31, 1996.

In either case, changing the status quo would disrupt employees and the work they are trying to do, Schumer said. If the RTC is folded into the Federal Deposit Insurance Corp., as Casey has suggested, it might set off turf battles or simple disagreements that cause further disruptions between RTC and FDIC personnel, he said.

Casey told the subcommittee that if the RTC finished up this year, it would transfer its legal and asset sales divisions to the FDIC. RTC officials expect to have about \$ 40 billion to \$ 60 billion in assets remaining to be sold at the end of 1993. Its legal work "will go on forever," he said.

Richard Aboussie, RTC acting general counsel, said at the hearing that the agency has about 65,000 open legal matters right now, which are not all law suits. These include transactions, closings, and examinations of contracts, he said.

If it closed down, the RTC would save taxpayers about \$ 360 million annually in salaries alone, Casey said.

Rep. Toby Roth (R-Wis), the subcommittee's ranking Republican, asked Casey to submit a detailed copy of the RTC's plan to close down operations by the end of the year.

Both Flake and Roth also said they supported adding a provision to an RTC funding bill that would change the agency's governing structure so that the president and chief executive officer was no longer a "sole member corporation," without whom the agency shuts down.

Casey said Congress set the RTC up that way to keep it independent from the Treasury Department, but added that he agreed it should be changed so that the senior vice presidents have the authority to keep the agency running without him.

Excessive Bonuses Questioned

Rep. Stephen Neal (D-NC), chairman of the financial institutions subcommittee of the Banking Committee, visited the hearing to ask Casey about the excessive bonuses he paid 136 RTC executive level employees earlier this year for their work in 1992.

Although he realizes that bonuses are a "legitimate management tool," Neal said he had an obligation to get Casey's explanation on the record.

Neal said that he learned that 32 RTC employees received bonuses of more than \$ 10,000, of which five were greater than \$ 20,000, and two were more than \$ 25,000.

Total bonuses, paid in 1993 for 1992 performance, totaled over \$ 1 million, Neal said, compared to the 1991 performance payout of \$ 444,000.

Casey acknowledged the bonuses, saying that the greatest amounts went to himself, who was paid less than the amount he agreed to, and his two senior vice presidents, who he said saved taxpayers hundreds of millions of dollars.

Casey Defends Sales and Contracts

Casey also defended the RTC's sales strategies, saying that without high-volume sales methods such as securitization and portfolio sales, the RTC would not be able to meet its statutory 1996 sunset date, nor maximize returns for taxpayers. Mounting holding and asset management costs would offset improvements in price, if any, from slower, retail sales methods, Casey said.

As required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the RTC relies on the services of the private sector for the performance of most of its activities. The agency has issued more than 100,000 contracts with estimated fees of about \$ 3 billion since its inception.

"This extensive use of private sector contractors, while necessary, exposes the RTC to waste, fraud and abuse," Casey said.

"The corporation has therefore given the highest priority to establishing an internal control structure to monitor the awarding of its contracts and the performance of its contractors to ensure full performance at a fair price."

Price Waterhouse Contract

The Price Waterhouse contract for work done at HomeFed Bank in California "does not represent a system breakdown," Casey said.

While conceding that some mistakes were made in the issuance of the task order for this contract, Casey said that it was awarded competitively, the work was extensively overseen by RTC employees, and the work fulfilled the requirements of the contract.

The renegotiated contract with Price Waterhouse, announced Feb. 17, is expected to result in savings of \$ 4 million, Casey said, bringing the total bill to about \$ 20 million. As he told the Senate Banking Committee Feb. 19, the RTC chief said that this will reduce photocopying charges from 67 cents a page to 37 cents a page.

In hindsight, Casey said, it would have been wise to renegotiate the contract terms at the time the agency realized that the scope of the contract was expanded beyond its original understanding.

Also, he said, the agency should have included a "not to exceed" clause in the contract that set a limit on expenditures without further review and approval. The RTC's contracting procedures require such clauses, Casey said, "and this experience will not be repeated."

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In response to a question, Casey acknowledged that the RTC received a claim from HomeFed's holding company--which is in bankruptcy--as a creditor, alleging that the agency, as receiver of HomeFed Bank, undervalued real estate owned, which cost the holding company \$ 5 billion.

An RTC spokeswoman said that the credit claim was filed Oct. 13, 1992, and the agency has six months to respond.

2ND STORY of Level 1 printed in FULL format.

PAGE 6

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BNA BANKING DAILY

Feb. 24, 1993

LENGTH: 1459 words

TEXT:

RTC

CASEY WILL STAY ON AT RTC IF CONGRESS
AGREES TO SHUT DOWN AGENCY AT YEAREND

WASHINGTON (BNA) -- Albert Casey, chief executive of the thrift cleanup agency, told members of a House Banking subcommittee Feb. 23 that he would withdraw his resignation and stay on at his post if Congress accepted his plan to shut down the agency at the end of this year.

Casey, who was responding to questions from Rep. Floyd Flake (D-NY), chairman of the newly formed Subcommittee on General Oversight, Investigations and the Resolution of Failed Financial Institutions, said that, in any case, he would remain at the RTC helm until a successor was found and confirmed to the position.

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An RTC spokeswoman said that the credit claim was filed Oct. 13, 1992, and the agency has six months to respond.

To: Richard T. Aboussie@Legal-sc@RTCDC
 Cc:
 Bcc:
 From: Bruce Pederson@Legal-Corp@RTCDEN
 Subject: Inquiry
 Date: Tuesday, April 27, 1993 16:29:37 MDT
 Attach:
 Certify: Y
 Forwarded by:

 I am writing to respectfully ask whether you were the Washington, D.C. official who requested that Assistant General Counsel Barbara Shangraw gain access to my computer and review my word perfect files. I believe that this action was initiated on or about March 12, 1993. Thank you.

Bruce Pederson

To: Bruce Pederson@Legal-Corp@RTCDEN
 Cc:
 Bcc:
 From: MS@RTCDC21@SERVERS
 Subject: Confirmation of Receipt
 Date: Wednesday, April 28, 1993 5:22:33 MDT
 Attach:
 Certify:
 Forwarded by:

 To: Richard T. Aboussie@Legal-sc@RTCDC
 Cc:
 Subject: Inquiry

The above message has been received by:

Richard T. Aboussie@Legal-sc@RTCDC



To: John Waechter@INFO@RTCDEN
 Cc:
 Bcc:
 From: Barbara Shangraw@Legal-Corp@RTCDEN
 Subject:
 Date: Friday, March 12, 1993 15:56:10 MST
 Attach:
 Certify: Y
 Forwarded by:

EXHIBIT

1 E

I have been requested by D.C. to get into Bruce Pederson's word perfect. Please copy into a directory for me what Bruce has in his word perfect.

EXHIBIT

1 F

***** WARNING *****

UNAUTHORIZED ACCESS TO THIS UNITED STATES GOVERNMENT COMPUTER SYSTEM AND/OR SOFTWARE IS PROHIBITED BY PUBLIC LAW 98-473.

Public Law 98-473, Chapter XXI, Paragraph 1030 states that, "Whoever knowingly accesses a computer without authorization, or having knowingly accessed a computer with authorization, ...obtains..., uses, modifies, destroys, or discloses..., or prevents authorized use of (data or a computer owned by or operated for) the Government of the United States...shall be punished (by)...a fine...or...imprisonment." The punishments range up to \$100,000 and 10 years, depending upon the nature and extent of the violation.

REPORT UNAUTHORIZED USE OR ACCESS TO YOUR SECURITY OFFICER

***** WARNING *****

Press any key to continue . . .

EXHIBIT

1 G

You are logging in as Bruce Pederson@Legal-Corp@RTCDEN.

It's Wednesday, May 5, 1993 15:29:47 MDT.

Your last login was on Wednesday, May 5, 1993 9:18:30 MDT.

Drive P: => FsPrivate4@DEN04@RTCDEN

Drive J: => FsLglCommon@DEN04@RTCDEN

Drive S: => FsApplic4@DEN04@RTCDEN

PC color: => ON

Printer LPT1: => PSR38.01@DEN04@RTCDEN

Mail service => Post Office@RTCDEN04@Servers

You have 2 new MAIL messages. Use the MAIL program to read them.

To: Barbara Shangraw@Legal-Corp@RTCDEN
 Cc: Jackie Taylor@Legal-Proj@RTCDENRF
 Bcc:
 From: Bruce Pedersen@Legal-Proj@RTCDENRF
 Subject: Trust
 Date: Wednesday, September 9, 1992 15:34:59 MDT
 Attach:
 Certify: Y
 Forwarded by:

 I want to continue on with our efforts to engender greater trust of one another. Towards that end, I have a short list of questions that I would like to pose. They arise from concerns expressed by professional colleagues, friends, and legal counsel; as well as from occasional yet inexplicable circumstances which stand out. The questions are intended to include Jackie Taylor and me (the collective "we" in the questions).

1. Have we been the subject of physical surveillance at any time since 1/1/92?
2. Have our electronic mail boxes been monitored, and their contents read, for incoming or outgoing EMail traffic at any time since 1/1/92?
3. Have our telephones been tapped or monitored at any time since 1/1/92?
4. Has our personal mail been opened, screened, or withheld at any time since 1/1/92?

In the spirit of full disclosure, I need to tell you that I am planning to also send a Freedom of Information Act request to the RTC which will touch on many of these issues. I am prepared to trust your answers but need to hold the agency to a position. For example, you may not be in a position to know what Jeff did during his tenure or what Legal Division officials in Washington, D.C. have done without notice to you. In short, the FOIA request is intended to put the agency on record.

I hope you understand the spirit in which this EMAIL request is sent to you. I am attempting to "clear the air." So much hurt and distrust has arisen in the past 120 days. I know of no other means of dealing with this problem. Thanks.


Bruce



To: Bernard Brodsky@Legal-Lit@RTCDEN
 Cc: Albert V. Casey@CEO@RTCDC
 Richard T. Aboussie@Legal-sc@RTCDC
 Ira H. Parker@Legal-lit@RTCDC
 Thomas L. Hinds@Legal-pls@RTCDC
 Mark Gabrellian@Legal-pls@RTCDC
 James Densmore@Executive@RTCDEN
 Jon Karlson@Executive@RTCDENCO
 Barbara Shangraw@Legal-Corp@RTCDEN
 Robert Ward@Legal-Lit@RTCDEN
 James R. Dudine@Oper-inv@RTCDC
 Ron Schira@Investigations@RTCDEN
 John J. Adair@IG@RTCDC, Wayne Zigler@OIG@RTCDEN

Bcc:
 From: Jackie Taylor@Legal-Proj@RTCDENRF
 Subject: Your Documents Assignments
 Date: Monday, October 19, 1992 17:00:11 MDT
 Attach:
 Certify: Y
 Forwarded by:

You have stated that you intend to stop by our offices Tuesday morning at 9am to "inspect our files", thus sparing us the requirement of transporting them to your office and presumably from preparing an index. You, as a manager, are welcome to stop by anytime you wish. Please, however, be advised that we have not yet commenced an inventory of the documents, therefore, your visit is inconvenient and premature. We have not been allowed sufficient time to prepare an inventory due to the fact that we have been diligently preparing our written response to your written demands concerning the handling of PLS cases.

Furthermore, be advised that neither of us will grant you our permission to rummage through our files, desks, offices, etc. on your own. Because of the circumstances of the many forced moves we have been through since the reorganization, many of our files have been commingled with personal papers. We seek to separate the two categories of documents. Until we have had an opportunity to do so, we have an expectation of privacy to the majority of files in our offices. 

Please let us know how you would like to proceed. Our recommendation is that we be permitted to complete our reply to Mr. Casey's testimony before we are forced to do this extensive document assignment. Our reply to the testimony is a time sensitive project with a fast approaching deadline. You have been given the fact specific information you requested regarding our earlier testimony. That was the most time sensitive matter you have assigned to us. We believe that any other prioritization will constitute an effort to block us from preparing a response by keeping us so busy with going through documents in our offices that we are effectively blocked from complying with the Senate's request. We think that most reasonable persons, including Chairman Riegle, would interpret this as a sign of retaliation, something both he and CEO Casey have said will not happen.

We will await your EMail response on Tuesday morning. Thank you.

Bruce and Jackie

P.S. For the benefit of the OIG officials who continue to be copied on this exchange of e-mails, we have recently met with and continue to fully cooperate with representatives of the OIG in their investigation of PLS and review of the Fact Sheet.

To: Bruce Pedersen@Legal-Proj@RTCDENRF
Cc:
Bcc:
From: Barbara Shangraw@Legal-Corp@RTCDEN
Subject: re: Trust
Date: Friday, September 11, 1992 11:33:34 MDT
Attach:
Certify: Y
Forwarded by:

Obviously, I can only respond regarding what I know.

I am not aware of any physical surveillance.

I am not aware of any E mail monitoring.

I am not aware of any phone tapping.

I have instructed those who process your mail to send you anything marked personal and confidential unopened. If there were items that were not so marked, they were opened. If there was an item marked personal and confidential that was opened, that is contrary to any directions that I have given.

I can't speak for the IG or the GAO or any other entity out there nor can I speak to anything of which I have no knowledge.

September 12, 1992

Resolution Trust Corporation
FOIA/PA Branch
International Place
1735 North Lynn Street
Rosslyn, Virginia 22209

Dear Sir or Madam:

This letter is a request, pursuant to the Freedom of Information Act and the Privacy Act (if applicable), for information contained in the categories listed in the second paragraph of this letter. The request covers any pertinent information maintained in hard copy records (such as memoranda, reports, files, printed electronic mail messages, notes, work papers), stored electronic mail messages, computer directories and tapes, or floppy disks.

The requested categories of information are:

1. TELEPHONE MONITORING.

Any and all information pertaining to the monitoring of the RTC office telephones used by Bruce J. Pederson and Jacqueline P. Taylor. These numbers are designated as (303) 291-3503, (303) 620-8153, and (303) 291-5838 for Bruce J. Pederson; and (303) 291-4744, (303) 620-8140, (303) 291-5718, and (303) 556-6711 for Jacqueline P. Taylor. Monitoring is defined to mean the tracking of incoming and/or outgoing calls by telephone number, quantity, or length of call; and/or actual eavesdropping to listen to the contents of a conversation. Specifically, we seek information relating to:

- A. Who recommended monitoring our work telephones.
- B. Who approved any monitoring activity.
- C. Dates when the monitoring was in affect.
- D. Who performed the monitoring.
- E. What information was gathered from the monitoring.

We believe that such information may be contained in written memoranda prepared by senior Legal Division officials, telephone logs or files maintained by receptionists, and files generated by employees in the RTC Office of Inspector General.

EXHIBIT

I

2. ELECTRONIC MESSAGE MONITORING.

Any and all information pertaining to the monitoring of the RTC electronic mailboxes used by Bruce J. Pederson and Jacqueline P. Taylor. These are currently designated by the "street talk" names of Bruce Pedersen@Legal-Proj@RTCDENRF and Jackie Taylor@Legal-Proj@RTCDENRF. This request also includes monitoring of any prior "street talk" names used since January 1, 1992. Monitoring is defined to mean the tracking of incoming and/or outgoing electronic mail messages by sender, recipient, or quantity; and/or actual eavesdropping by reviewing the contents of the electronic mail messages. Specifically, we seek information relating to:

- A. Who recommended monitoring our electronic mailboxes.
- B. Who approved any monitoring activity.
- C. Dates when the monitoring was in effect.
- D. Who performed the monitoring.
- E. What information was gathered from the monitoring.

We believe that such information may be contained in written memoranda prepared by senior Legal Division officials, logs or files maintained by ISU personnel, and files generated by employees of the RTC Office of Inspector General.

3. MAIL MONITORING.

Any and all information pertaining to the monitoring of any incoming mail addressed to Bruce J. Pederson and Jacqueline P. Taylor. The primary address used on the mail is: RTC-Legal Division, 1225 17th Street, Denver, CO 80209. This request also is intended to encompass any other Denver metropolitan area addresses used by the RTC (e.g., 707 17th Street, Denver, CO 80209). Monitoring is defined to mean tracking of incoming mail by sender, contents or quantity; and/or the actual opening of the mail for a review of the contents. Specifically, we seek information relating to:

- A. Who recommended monitoring our incoming mail.
- B. Who approved any monitoring activity.
- C. Dates when the monitoring was in effect.
- D. Who performed the monitoring.
- E. What information was gathered from the monitoring.

-3-

We believe that such information may be contained in written memoranda prepared by senior Legal Division officials, logs or files maintained by mail room personnel, and files generated by employees of the RTC Office of Inspector General.

4. PHYSICAL SURVEILLANCE.

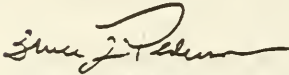
Any and all information pertaining to the monitoring of the physical presence of Bruce J. Pederson and Jacqueline P. Taylor in the course of their RTC employment at the Republic Plaza or ARCO Tower offices. Monitoring is defined to mean the physical surveillance of Bruce J. Pederson or Jacqueline P. Taylor for the purpose of ascertaining the location and ostensible activity of these employees. Specifically, we seek information relating to:

- A. Who recommended physical surveillance.
- B. Who approved any surveillance activity.
- C. Dates when physical surveillance was in effect.
- D. Who performed the surveillance.
- E. What information was gathered from the surveillance.

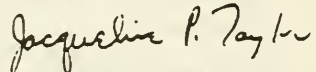
We believe that such information may be contained in written memoranda prepared by senior Legal Division officials, logs or files maintained by non-legal personnel sharing floor space with Bruce J. Pederson or Jacqueline P. Taylor, and files generated by employees of the RTC Office of Inspector General.

We look forward to a timely reply within the statutory response period. Please let us know in advance whether search and/or copying costs will exceed \$25.00. Thank you for your assistance. We can be reached at the addresses and telephone numbers which follow our signatures.

Sincerely,



Bruce J. Pederson
175 South Jackson #1
Denver, CO 80209
Work (303) 291-3503
Home (303) 394-3948



Jacqueline P. Taylor
P.O. Box 4077
31739 Quarter Horse Rd.
Evergreen, CO 80439
Work (303) 291-4744
Home (303) 674-9864

March 17, 1993

RTC Office of the Secretary
FOIA/PA Branch
1735 N. Lynn Street
Rosslyn, VA 22209

Re: Appeal for RTC FOIA #92-1101

Dear Mr. Lindenmuth:

We have received your notification, dated February 19, 1993, that no agency records responsive to the subject FOIA request have been found. This letter constitutes our appeal, under the Freedom of Information Act, of your conclusion. It is timely submitted within thirty days of your initial determination.

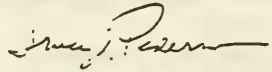
We believe that agency records responsive to our FOIA request do exist. Our request should be interpreted in the following manner: We seek records depicting any decisions by any RTC employee to monitor us (i.e., our use of telephones, electronic mail or other computer data bases, regular mails, physical comings and goings). Such records would include any decisions by RTC personnel to access regularly maintained information (such as call detail reports, word perfect contents, electronic mailbox contents, telephone message logs, etc.) using our names, telephone numbers, computer streettalk designations, etc. Such records would also include decisions by RTC personnel to track our whereabouts within the office. At this time, we are not seeking the underlying databases.

It would be most productive to search Legal Division files in Washington, D.C. and Denver, Colorado. The following individuals would be most likely to possess responsive records: Richard Aboussie, Ira Parker, Gleon Curtis, Barbara Shangraw, Robert Ward, Ellis Merritt, Herb Messite, Michael Nelson, and Deanna Whisman. Other offices within RTC which deal with various modes of communication may also have such documents in their possession (e.g., administrative support units for the Legal Division, Information Services Units ("ISU"), and mail rooms).

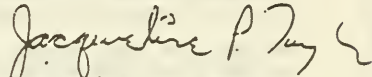
We also respectfully ask that the Acting General Counsel, Richard Aboussie, be recused from ruling on this appeal. His conduct may very well be implicated by the records sought in this FOIA request.

If you have any questions, please contact us at the telephone numbers listed below our signatures. Thank you in advance for processing our FOIA request, as further defined in this letter.

Sincerely,



Bruce J. Pederson
175 S. Jackson St. #1
Denver, CO 80209
(303) 291-4651 Work
(303) 394-3948 Home



Jacqueline P. Taylor
P. O. Box 4077
Evergreen, CO 80439
(303) 291-4773 Work
(303) 674-9864 Home



RESOLUTION TRUST CORPORATION
Resolving The Odds
Resolving The Questions

1735 E. Lynn Street
Rosslyn, VA 22209
(703) 908-6134

RESPONSE TO FREEDOM OF INFORMATION
ACT (FOIA) OF
PRIVACY ACT (PA) REQUEST

RESOLUTION TRUST CORPORATION

ETC Request No. 01.
ETC FOIA - 92-1101

ETC PA -

Response Type

Full Final Partial

Date

February 10, 1993

Requester

Jacqueline P. Taylor and Bruce J. Pedersen c/o Jacqueline P. Taylor

PART I. - AGENCY RECORDS RELEASED OR NOT LOCATED

1. ☒ No agency records subject to the request have been located. If you consider this a denial, see Part II.C.
2. ☐ No agency records were located for portions of the request. (See comments section, Part I-1 and Part II.C.)
3. ☐ No additional agency records subject to the request have been located.
4. ☐ Requested records are available through another public distribution program (see comments section).
5. ☐ This confirms your agreement with staff of the FOIA/PA Branch that you clarified or reformulated your request to be for the records described in the comments section below or the attached appendix(ies).
6. ☐ The request has been referred for response by another agency.
7. ☐ Records subject to the request have been referred to the responsible agency(ies) for review and direct response. (see comments section).
8. ☐ Agency records subject to the request that are identified below or on the attached Appendix(ies) are or will be available for public inspection and copying at ETC's Reading Room, 801 17th St., S.W., Washington, D.C. 20034-0001. Hours are from 9 a.m. to 5 p.m. Monday through Friday, and the telephone number is (202) 416-0940. No additional action on your part is necessary. The Reading Room staff will make the appropriate copies and send them to you accompanied by an invoice for a duplication fee of twenty cents per page.
9. ☐ The bid summary that you agreed to accept in a conversation with a member of my staff [redacted] is enclosed or [redacted] is available for public inspection and copying at the ETC Reading Room, see Section 9.
10. ☐ Agency records identified below or on the attached appendix(ies) are enclosed.
11. ☐ Enclosed is an invoice for request processing fees (see attached).
12. ☐ The payment in excess of actual fees will be refunded in the amount of \$

PART II.A INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

13. ☐ Certain information in the requested records is being withheld from public disclosure pursuant to the exemption(s) described in and for the reason(s) stated in Part II.B of this response.

COMMENTS

Inasmuch as your request was submitted jointly, we are responding with this single, consolidated letter, addressed to you both. We have interpreted your request to be for agency records relating to alleged telephone monitoring, electronic mail message monitoring, mail monitoring, and physical surveillance directed specifically at either or both of you otherwise than in the ordinary course by virtue of your employment relationship with the ETC. Thus, e.g., call detail reports (which list the time, duration and telephone number called from each telephone unit in the ETC), electronic databases routinely tracking all Federal Express mailings incoming to the Denver Field Office, phone messages noted by other employees in your absence or on your behalf, and policy statements regarding mail room procedures were considered to be beyond the scope of your request. We do not possess any agency records responsive to your request as interpreted. If you wish to request access to call detail reports for particular telephone numbers or to records concerning alleged monitoring and surveillance activities not specifically directed at either or both of you, you may submit a new FOIA request for that information. Please be advised, however, that considerable direct costs may be associated with any such FOIA request.

EXHIBIT

1 J

Signature, Chief, FOIA/PA Branch

Staff initials

JS

RESPONSE TO FOIA OR PA REQUEST

ETC FOIA- 92-1161

ETC PA-

PART II.B APPLICABLE EXEMPTIONS

Records subject to the request that are described on the enclosed Appendix(a)(fee) are being withheld partially or wholly under the exemptions and for the reasons set forth below, pursuant to the FOIA at 5 U.S.C. §552(b) or the PA at 5 U.S.C. §552a(c).

1. The withheld information is properly classified pursuant to Executive Order. EXEMPTION (b)(1)
2. The withheld information relates solely to the internal personnel rules and procedures of the FDIC/ETC. EX. (b)(2)
3. The withheld information is specifically exempted from public disclosure by the statute indicated: EX. (b)(3)
4. The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated: EXEMPTION (b)(4)
 - The information is considered to be a trade secret.
 - Disclosure of the information would likely cause substantial competitive harm to the submitter of the information.
 - Disclosure of the information would likely impair the ETC's ability to obtain similar information in the future and/or impair the ETC's program effectiveness.
5. The withheld information consists of inter-agency or intra-agency records that are not available through discovery during litigation. EXEMPTION (b)(5) Applicable privileges:
 - Deliberative process privilege. (The privilege (1) encourages open, frank internal discussions on matters of policy; (2) protects against premature disclosure of proposed policies; and (3) protects against public confusion that results from disclosure of reasons and rationales that were not in fact ultimately the grounds of an agency's action.) Where the records are withheld in their entirety, the facts are inextricably intertwined with the deliberative information and release of the facts would permit an indirect inquiry into the deliberative process.)
 - Attorney work-product privilege. (The privilege protects records prepared by an attorney in contemplation of litigation.)
 - Attorney-client privilege. (The privilege protects confidential communications between an attorney and client.)
 - Commercial privilege. (The privilege protects the ETC from being placed at a competitive disadvantage.)
 - Other:
6. The withheld information is exempt from public disclosure because its disclosure would constitute a clearly unwarranted invasion of privacy. EXEMPTION (b)(6)
7. The withheld information was compiled for law enforcement purposes and is being withheld for the reason(s) indicated. EXEMPTION (b)(7)
 - Disclosure could reasonably be expected to interfere with enforcement proceedings because it could reveal the scope, direction, and focus of enforcement efforts and thus result in hindrance of enforcement efforts. EXEMPTION (7)(A)
 - Disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. EXEMPTION (7)(C)
 - The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources. EXEMPTION (7)(D)
 - Other:
8. The information is contained in or related to examination, operating or condition reports on a financial institution. Exemption (b)(8)
 - Disclosure of the material, used to determine qualifications for federal employment or promotion, would compromise the objectivity or fairness of the process. Exemption (b)(6)
 - Other:

PART II.C APPEAL RIGHTS

Any denial may be appealed to the ETC's General Counsel within 30 days of receipt of this response. Appeals must be submitted in writing and should be addressed to the ETC's Office of the Secretary, FOIA/PA Branch, 1735 N. Lynn Street, Rosslyn, VA 22209. The letter and envelope should clearly be labeled as a FOIA appeal.



RESOLUTION TRUST CORPORATION

Resolving The Crisis
Restoring The Confidence

April 16, 1993

Ms. Jacqueline P. Taylor
Mr. Bruce Pederson
c/o Ms. Jacqueline Taylor
P.O. Box 4077
31739 Quarter Horse Road
Evergreen, CO 80439

Re: Freedom of Information Act Appeal No. RTC-93-A007

Dear Ms. Taylor and Mr. Pederson:

This is in response to your letter of March 17, 1993, appealing the RTC's response to your request for documents pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended.

By letter dated September 12, 1992, you jointly submitted a FOIA request for information pertaining to telephone monitoring, electronic mail monitoring, mail monitoring and physical surveillance. Specifically, you sought information relating to: a) who recommended monitoring; b) who approved monitoring; c) dates when monitoring was in effect; d) who performed monitoring; and e) the information gathered from monitoring, for each category of monitoring.

In its decision dated February 19, 1993, the RTC FOIA/PA Branch informed you that no agency records responsive to your request could be located. The response also advised that the RTC had "interpreted your request to be for agency records relating to [such alleged activities] directed specifically at either or both of you otherwise than in the ordinary course by virtue of your employment relationship with the RTC," and excluded therefore such records as routine call detail reports, mail tracking reports, etc. (With regard to records generated by, or in the possession of, the Office of the Inspector General, I am informed that you have received a response directly from that office.)

On March 17, 1993, you appealed the RTC's "no record" response. In your appeal letter, you requested that we interpret your FOIA request to include "records depicting any decisions by any RTC employee to monitor us (i.e., our use of telephones, electronic mail

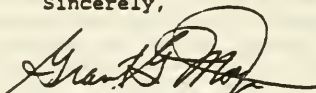
or other computer data bases, regular mails, physical comings and goings)." You also suggested the names of several employees whose files you suggested "would be most likely to possess responsive records."

An agency is required to conduct a search for requested records, using methods which can be reasonably expected to produce the information requested. Oglesby v. Department of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990). A search is not unreasonable simply because it fails to produce all relevant material. Meeropol v. Meese, 790 F.2d 942, 952-53 (D.C. Cir. 1986). In that regard, I note that, despite your assertion of a belief that "agency records responsive to our request do exist," you provide no information in your appeal letter regarding the existence or identification of even one such record. Based on the information you supplied and the existing administrative record, this office investigated the circumstances of the initial searches for information as of February 19, 1993, and determined that those searches were reasonable. Moreover, subsequent queries were made of the individuals mentioned in your appeal letter and no records within the scope of your request were located. Accordingly, I find that the RTC's "no record" response was appropriate.

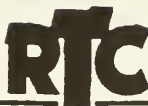
With regard to the portion of your appeal letter referring to "other computer data bases," I note that your September 12, 1992, request letter was quite specific in indicating which records were sought. The only mention of electronically maintained records were "electronic messages." No searches were conducted for records other than those so noted. If you wish to submit a request for information concerning records pertaining to the monitoring of "other computer data bases" you may contact the FOIA/PA Branch directly, in writing, and a new request will be opened.

Inasmuch as my action on your appeal does not constitute a complete grant of access, I am required by statute to inform you of your right to obtain judicial review. Such review is available to you in the United States District Court for the District in which you reside or in the United States District Court for the District of Columbia. 5 U.S.C. § 552(a)(4)(B).

Sincerely,



Grant G. Moy, Jr.
Senior Counsel
Department of Corporate Affairs
Division of Legal Services

RECEIVED
AUG 28 1992Resolution Trust Corporation

MEMORANDUM TO: All Legal Division Employees

FROM: Richard T. Aboussie
Acting Senior Vice President
and General Counsel *RTA Aboussie*

SUBJECT: Cooperation with OIG Investigation

DATE: August 27, 1992

The Inspector General has the authority under the Inspector General Act and FIRREA to conduct audits and investigations of the programs and operations of the Resolution Trust Corporation. Albert V. Casey, Chief Executive Officer, has specifically requested that the Inspector General investigate allegations regarding the conduct of the Corporation's professional liability litigation. That investigation is now underway.

As always, it is the responsibility of all Corporation employees to fully cooperate with the OIG investigation and promptly provide all requested information to authorized OIG representatives. Given the nature of OIG investigations, it is inappropriate to discuss the investigation with anyone other than the OIG representatives. Communications with an attorney for the purpose of giving or seeking legal advice, and communications between a bargaining unit member and union representative for the purpose of obtaining representation are not prohibited by this admonition.

You should also be aware that the Inspector General Act specifically guarantees the Inspector General right of access to all documents available to the Corporation, and prohibits any reprisal against any employee for disclosing information to the Inspector General.

Thank you for your cooperation.

RTA/jc

cc: Albert V. Casey



To: *Legal@RTCDEN,*Legal-Assets@RTCDEN,*Legal-Corp@RTCDEN
*Legal-Lit@RTCDEN,*Legal-Proj@RTCDENRF
Cc:
Bcc:
From: Barbara Shangraw@Legal-Corp@RTCDEN
Subject: IG
Date: Tuesday, December 22, 1992 10:03:41 MST
Attach:
Certify: Y
Forwarded by:

I would like to reiterate again the need for all within this office to fully cooperate with the office of the Inspector General. Please be straightforward and provide all documentation that they request. If you are unsure what they are asking, please ask for clarification.

Also, please note that IG investigations are confidential. Please restrict your discussions of matters under investigation, especially to those outside of the agency.



**OFFICE OF
INSPECTOR
GENERAL**

**RESOLUTION TRUST
CORPORATION**

December 1992

Dear fellow RTC employee:

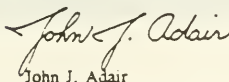
Two years ago, the Office of Inspector General established a nationwide toll-free hotline (1-800-833-3310) to receive complaints and allegations of fraud, waste, abuse, and mismanagement in RTC programs and activities. Thanks to your calls, we have initiated almost 300 investigations and inquiries about reported wrongdoing, and of the ones completed, 23 percent have been substantiated. These cases include:

- an RTC official who improperly accepted a gift from a contractor;
- a managing agent submitting false travel vouchers;
- a development company misrepresenting itself as non-profit;
- an employee who flagrantly abused work hours; and
- individuals who purchased affordable housing as investments.

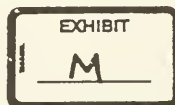
In each case, corrective measures have been taken.

We want to thank you for making these calls to us. With your continued assistance, we can help ensure that RTC is free of the type of fraud and abuse that led to the savings and loan debacle. I am enclosing a pamphlet that explains our hotline operation in more detail and a card that can be put into your rolodex for easy reference. We appreciate your interest in an effective, economical, and efficient RTC.

Sincerely,



John J. Adair
Inspector General



1735 N. Lynn Street • Reston, VA 2209
801 17th Street, NW • Washington, DC 20434-0001

Help Fight
Fraud, Waste, and
Mismanagement at
RTC



1-800-833-3310



Caller may remain anonymous or confidential

OFFICE OF
**INSPECTOR
GENERAL**

RESOLUTION TRUST
CORPORATION

You Can Help Fight Fraud, Waste, and Mismanagement!

1-800-833-3310 **HOTLINE**

RTC-OFFICE OF INSPECTOR GENERAL

or write

Office of Inspector General
Attn: HOTLINE
Resolution Trust Corporation
International Place, Suite 1100
1735 North Lynn Street
Rosslyn, VA 22209

The OIG Hotline is staffed Monday-Friday from 9 a.m. to 4 p.m., Eastern Time
Messages may be left on an answering machine after hours

If you suspect fraud, waste, abuse, or mismanagement in an RTC program or by an RTC contractor, call or write the Hotline or contact any of the following Inspector General locations.

Atlanta	Investigation	404-585-5790	Kansas City	Investigation	816-968-7154
	Audit	404-581-5155		Audit	816-968-7111
Dallas	Investigation	214-443-2800	Headquarters	Investigation	202-418-4342
	Audit	214-443-2811		Audit	202-418-2168
Denver	Investigation	303-281-3650			
	Audit	303-281-3654			



Office of Inspector General

The Office of Inspector General (OIG) conducts independent and objective audits and investigations of RTC operations and contractors in order to (1) improve RTC's efficiency and effectiveness, and (2) detect and prevent fraud, waste, abuse, and mismanagement in RTC programs.

The Inspector General (IG) is appointed by the President of the United States and confirmed by the Senate. The IG works under the general supervision of the RTC President and Chief Executive Officer and the Thrift Depositor Protection Oversight Board Chairman and reports to the Congress on the performance of RTC programs and operations. Often, OIG reports include recommendations for changes. Also, if criminal wrongdoing or other improper activity is found, the OIG works with the Department of Justice and other organizations to ensure that appropriate judicial and corrective actions are taken.



Audits, Investigations, and Other Initiatives

The OIG has a comprehensive, nationwide program for auditing and investigating RTC's activities. Audits cover a variety of issues including: asset management, contracting, conservatorship operations, resolution activity, financial and administrative activities, and information systems. Investigations

have focused on alleged criminal or otherwise prohibited activities involving RTC contractors, employees, vendors, and other individuals and groups who participate in RTC programs and operations.

The OIG also performs quality reviews of accounting firm audits of various RTC contractors; and reviews proposed RTC regulations, directives, and legislation to ensure that (1) RTC directives and regulations are consistent with existing laws and (2) sufficient internal controls, necessary to prevent fraud, waste, abuse, and mismanagement will be built into RTC program operations.



OIG Hotline

The OIG operates a toll-free, nationwide Hotline (1-800-833-3310) to facilitate reporting incidents of fraud, waste, abuse, and mismanagement within RTC and contractor operations. It is an employee's responsibility to report suspected instances of fraud, waste, abuse, and mismanagement in RTC programs or operations. The OIG Hotline makes it easier for RTC employees, contractors, and others to report incidents of fraud, waste, abuse, and mismanagement that threaten the success of RTC.



How Does It Work?

When a call is placed to the toll-free number, the caller is asked to provide details

to a Hotline staff member. Anyone can report information openly, anonymously, or confidentially.

OIG officials carefully review each hotline complaint to determine if it warrants review or investigation. If criminal activity, or other serious wrongdoing is alleged, an OIG investigator or auditor is assigned to pursue the complaint. Other matters may be referred to RTC management to review the circumstances surrounding the complaint and report findings and corrective actions to the OIG.



What Should Be Reported?

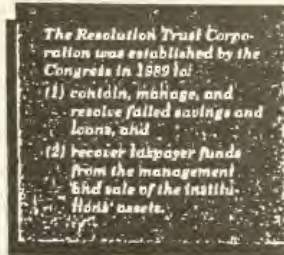
Any situation that involves suspected fraud, waste, abuse, or mismanagement of RTC programs, operations, and resources should be reported to the OIG Hotline. Examples of problems that should be reported include:

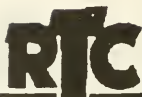
- contract and procurement fraud or collusion;
- bribery and acceptance of gratuities;
- gross mismanagement;
- misuse, embezzlement, or theft of government property or funds;
- employee misconduct such as misuse of official position and acceptance of unauthorized gifts, and
- other unethical or illegal activities.



o Hotline Callers Remain Confidential?

Confidentiality is granted to anyone reporting a problem to the Hotline, subject to the provisions of Section 7(b) of the Inspector General Act of 1978. This provision requires that the identity of employees not be disclosed without the employee's consent or unless the Inspector General determines that disclosure is unavoidable in the course of the investigation. OIG operational controls ensure that the identity of Hotline sources is protected, and the Inspector General Act prohibits reprisal actions against federal employees. A caller may also remain anonymous, if desired.





Resolution Trust Corporation

August 6, 1992

MEMORANDUM TO: Bruce Pederson
Bradley Smolkin
Jacqueline Taylor

FROM: Albert V. Casey
President and CEO

A handwritten signature in dark ink, appearing to read "Albert V. Casey", is written over the typed name and title.

RE: August 11, 1992 Appearance Before
Senate Banking Committee

The Senate Banking Committee has asked that you appear to provide testimony in Washington, D.C. on Tuesday, August 11 at 10:00 a.m., in room 534 of the Senate Dirksen Senate Office Building. A copy of the letter requesting your presence is attached.

It is the firm policy of the Resolution Trust Corporation to cooperate fully and forthrightly with Congress in the conduct of the latter's oversight activities, and I urge you to approach the Committee in that spirit. Let me assure you that your appearance will not have any bearing on your employment status with the RTC.

It will not be necessary for you to submit your written remarks to us for prior review or clearance. Should you wish for us to photocopy your testimony and/or arrange for its physical delivery to the Committee, however, please contact Peter Knight at (202) 416-2116.

Thank you.

Attachment

EXHIBIT

1

N



FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

OFFICE OF THE CHAIRMAN

August 7, 1992

Honorable Donald W. Riegle, Jr.
Chairman
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your recent letter concerning testimony by employees of the Resolution Trust Corporation at the Committee's August 11 hearing concerning RTC's civil litigation efforts.

As part of internal personnel policy and procedural guidance distributed to all Federal Deposit Insurance Corporation managers and supervisors, the Corporation sets forth principles with respect to the equitable treatment of all FDIC employees. One of these principles guarantees "protection of employees against reprisal for lawful disclosures of information...." In addition, various other Corporation personnel policies reaffirm this principle.

The FDIC will conduct itself in accordance with its policies and procedures.

Sincerely,

William Taylor
Chairman

P. 2C.

Bailout agency critics harassed?

RTC bosses accused of improper actions

By Steven Wilmsen
Denver Post Business Writer

Resolution Trust Corp. managers may have improperly broken into confidential computer files kept by an employee who criticized the savings and loan bailout agency and aided investigations into waste and abuse, according to a letter written by Colorado Rep. Pat Schroeder.

In a letter to Treasury Secretary Lloyd Bentsen and RTC Chairman Roger Altman, Schroeder, D-Colo., said authorities may have accessed electronic copies of correspondence between Bruce Pederson, an RTC attorney who has testified before



Schroeder

Congress about RTC problems, and investigators for the General Accounting Office and the Office of the Inspector General.

RTC managers also may have broken into computer files kept by Jackie Taylor, another RTC attorney who has exposed troubles in the agency, Schroeder said.

"I am extremely concerned that management may have broken into the computers of two RTC whistleblowers," Schroeder said in the letter, dated April 21, 1993.

"This action can only be seen as retaliation against Mr. Pederson and Ms. Taylor for blowing the whistle. It may constitute an illegal wire-tap or an illegal search and seizure. It surely sends a chilling message to potential whistleblowers at the RTC."

The letter asks Bentsen and Altman to investigate the charges.

"You must send a message to management that you will not tolerate this kind of harassment and a message to federal employees that they can expose waste, fraud and abuse without fear of retaliation," said Schroeder.

EXHIBIT

O

Thurs., April 29, 1993

Rocky Mountain News

BUSINESS ■ 571

Schroeder calls for investigation of alleged RTC computer break-in

By John Rebchook

News Real Estate Editor

Rep. Pat Schroeder said Wednesday she is calling for an investigation of management at the Resolution Trust Corp.'s Denver office for allegedly breaking into the computers of two "whistleblowers."

In April 21 letters to Roger Altman, chairman of the RTC, and Lloyd Bentsen, treasury secretary, the Colorado Democrat said she is "extremely concerned" that management may have broken into the computers of Bruce Pederson and Jacqueline Taylor.

Pederson and Taylor, lawyers for the RTC, last year testified before Congress, charging that the agency was lax in going after lawyers, accountants, officers and others responsible for the failure of savings and loans.

Schroeder said their computers contained correspondences, documents and communications with Congressional offices.

"This action can only be seen as retaliation against Mr. Pederson and Ms. Taylor for blowing the whistle," Schroeder said. "It may constitute an illegal wiretap or an illegal search and seizure."

To: [REDACTED]@OIG@RTC
 Cc: Bruce Pederson@Legal-Corp@RTCDEN
 Bcc:
 From: Jackie Taylor@Legal-Assets@RTCDEN
 Subject:
 Date: Monday, February 8, 1993 10:26:19 MST
 Attach:
 Certify: Y
 Forwarded by:



 What is a good time to talk this week regarding the copies I dropped off?

Also, is the IG convinced that our e-mails to the IG are confidential? How about our telephone calls? I have been hearing "rumors" lately concerning confidentiality of communications (or lack thereof) regarding RTC field offices e-mails and telephones. Certainly, the staff in multiple locations continues to express their fears along these lines. If they are not completely confidential from surveillance or "taps" it would seem that communicating with the IG by these methods actually would be harmful to the security and confidentiality of any investigation.

To: Jackie Taylor@Legal-Assets@RTCDEN
 Cc:
 Bcc:
 From: [REDACTED]@OIG@RTC
 Subject: re: Meeting
 Date: Monday, February 8, 1993 10:43:00 MST
 Attach:
 Certify: Y
 Forwarded by:

 Wednesday through Friday looks good. Pick a date and time and let me know.

Re: E-mails and phones--If anyone has EVIDENCE that anything illegal is going on with either means of communication, I would hope they would express their concerns, along with the evidence to us--because we're not just talking "nosey," we're talking multiple felonies if we have evidence phone or computer "tapping" is taking place. Wire-tapping is not authorized unless you have a court order, and computer "tapping" constitutes an illegal search absent a subpoena.

To: [REDACTED]@OIG@RTC
 Cc: Bruce Pederson@Legal-Corp@RTCDEN
 Bcc:
 From: Jackie Taylor@Legal-Assets@RTCDEN
 Subject: re: Meeting
 Date: Monday, February 8, 1993 11:03:49 MST
 Attach:
 Certify: Y
 Forwarded by:

 It will have to be Friday morning that we meet. I am booked most of the rest of the week.

I understand the legalities of what you are saying. I did not intend to imply I have any evidence of anything. I would have to be a much more technically oriented person than I am to be able to even have an understanding of how one would begin to gather evidence of that nature. I was just asking a question and passing on office gossip. So many people that talk to me are very worried about that issue. I answer them as you have answered me, but that doesn't seem to alleviate their concerns. They seem to be looking for an official pronouncement that "NO THESE THINGS ARE NOT HAPPENING" rather than the answer both you and I have given, which is "IT IS AGAINST THE LAW TO DO THIS. IF YOU HAVE PROOF IT IS BEING DONE, TELL THE IG". Oh well, I needed to ask for my own peace of mind also. My confidence and trust level in legal management performing honestly and ethically in this type of matter is not very high after what I have been through over the last year. See you on Friday morning. I will come over there or call.

To: Bruce Pederson@Legal-Corp@RTCDEN
 Jackie Taylor@Legal-Assets@RTCDEN
 Cc:
 Bcc:
 From: [REDACTED]@OIG@RTC
 Subject: WA-92-0028
 Date: Friday, February 12, 1993 13:13:32 MST
 Attach:
 Certify: Y
 Forwarded by:

 I had a talk with my boss [REDACTED] following the interview I had with you this morning. [REDACTED] would like to write a letter to [REDACTED] who is in charge of administration for Legal, and pass onto [REDACTED] for his action briefly what your complaints were to me this morning.

To do that we obviously need to identify either both or one of you as the complainant.

And just so we're on the same wave length, here's what [REDACTED] would call [REDACTED] attention to:

1. Opening of mail marked personal and confidential for Bruce
2. Passing around of mail marked personal and confidential for Bruce
3. Unanswered grievance by Larry Brock for Bruce
4. Comings and goings being clocked for Jackie
5. Legal administration refusing to give access to time and attendance, job description records to both Jackie and EEO
6. People with info on above afraid to come forward because of reprisals

By E-mail, let me know if you agree to let us use your name(s) with Karlson.

To: [REDACTED]@OIG@RTC
 CC: Jackie Taylor@Legal-Assets@RTCDEN
 Bcc:
 From: Bruce Pederson@Legal-Corp@RTCDEN
 Subject: re: WA-92-0028
 Date: Tuesday, February 16, 1993 9:48:17 MST
 Attach:
 Certify: N
 Forwarded by:

 We would like to see the following list of issues raised by [REDACTED] in a letter to [REDACTED]. The first six are from your EMail to us.

1. Opening mail marked confidential and personal.
2. Leaving confidential mail on management's desk.
3. Unanswered grievance for Bruce.
4. Clocking Jackie's attendance.
5. Legal admin. refusal to give Jackie info/records.
6. Intimidation of employees for being seen with us.
7. Denial of Jackie's AWS day when she is on business travel.
 (management also denied comp and overtime pay) Call Jackie for details if needed.
8. Denial of Bruce's request for restoration of 15 hours of forfeited annual leave from 1991.
9. Management efforts to impose itself between us and OIG and GAO officials and members of Congressional staffs.

We appreciate your willingness to pursue these issues on our behalf. Please call or EMail me if you need additional information. I also plan to write [REDACTED] regarding the mail issue by tomorrow. I plan to make passing reference to some of the above issues which affect me.

Thanks!

Bruce



RESOLUTION TRUST CORPORATION

Resolving The Crisis
Restoring The Confidence

RECEIVED

JUL 26 1993

July 23, 1993

James A. Clark, Esq.
Baker & Hostetler
303 East 17th Avenue, Suite 1100
Denver, CO., 80208-1264

Dear Mr. Clark:

As you are aware, on January, 1993, I wrote you a letter regarding the relationship between Jeffrey North of your firm, and legal matters involving the Resolution Trust Corporation. A copy of that letter is attached for your reference.

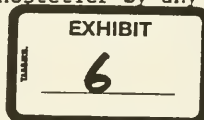
Based on conversations between members of my staff and employees of the Office of the Inspector General, it is now my understanding that the ongoing investigation relates only to matters which arose in the former Western Region of RTC, which included the Denver, Phoenix and Newport Beach offices. However, RTC management has received no report on the results of the investigation.

I am concerned that the conditions I imposed on Mr. North and the firm have been in place for more than six months without any indication that the investigation will soon come to a conclusion or be terminated. I recognize, therefore, that it is appropriate to reconsider the scope of the conditions in the light of the length of time in which the investigation has been ongoing.

I continue to be concerned that Mr. North be screened off from any matter that might bear a relationship to matters which were pending while he was RTC Regional Counsel for the Western Region. In order that the RTC can be fully protected, I would like the firm to continue to screen Mr. North from any work or matter that relates to the former Western Region, or that arose out of matters within the purview of any of the existing Denver or Newport Beach Field Offices (including those relating to operations or accounting work), or any thrift for which those offices are responsible.

However, in my view, Mr. North need no longer be screened off from matters assigned to Baker & Hostetler by any of the other field

801 17th Street, N.W. Washington, D.C. 20434



James A. Clark, Esq.
Page Two
July 23, 1993

offices (Atlanta, Dallas, Valley Forge or Kansas City) or the Washington office, providing

1. They do not meet the criteria described above (regarding work related to the former Western Region, and
2. Mr. North had no role whatsoever in soliciting the work for Baker & Hostetler after he joined the firm, and
3. Mr. North had no role whatsoever in recommending or assigning the work to Baker & Hostetler while he was an employee of RTC.

At this time, and until the situation changes, it is no longer necessary for RTC to avoid having Mr. North work on any matter. As a general proposition, there is no objection to having him working on matters from which he will not be screened, under the criteria described above. I am mindful, however, that when the results of the investigation are reported to RTC management, a more complete screen may have to be reimposed. Therefore, before Mr. North may work on any specific RTC matter, the firm should obtain the express written permission of the field Assistant General Counsel. Also all relevant RTC requirements relating to legal services agreements, including the scheduling of Mr. North's billing rate in RLIS, must be met.

Given the nature of the investigation, please ask that attorneys other than Mr. North conduct direct communications on behalf of the firm, with any RTC employees regarding RTC matters. I prefer that Mr. North be asked not to do so. This will ensure that no new incidents or allegations arise while the investigation is ongoing.

Like you, I am hopeful that the investigation will be concluded with dispatch, and that none of the limitations described above will be necessary in the future.

Sincerely yours,
Richard T. Aboussie
Richard T. Aboussie
Acting General Counsel

cc: John Woodrum
E. Glion Curtis
Sally Ridenour
Thomas Luck
David Swiss
Arturo Vera-Rojas
Barbara Shangraw
Neil B. Van Winkle

To: *@legal-assets@rtcden
 *@legal-corp@rtcden
 *@legal-lit@rtcden
 *@legal-proj@rtcden
 Cc:
 Bcc:
 From: Colleen Larsen@Legal-Corp@RTCDEN
 Subject: Welcome
 Date: Friday, September 17, 1993 8:49:35 MDT
 Attach:
 Certify: N
 Forwarded by:

 Please welcome the following employees to the Legal Division:

EXT	NAME	ROOM	SECTION	TITLE
3586	Baldwin, Dana M.	3500	Admin/Whisman	File Clerk
4684	Dallin, Angela L.	3847	Lit/Unger	Legal Tech
4789	McLaurin, Randolph A.	3736B	Assets/Boelte	Legal Tech
4672	Posey, Mark E.	3833	OC Mgmt/Enright	Attorney
4722	Ramirez, Norma L.	3736A	Assets/Boelte	Secretary
4766	Reyes, Marie	3725C	Assets/Vaughan	Secretary
4674	Rhodes, Rhonda L.	3827	Lit/Lincoln	Attorney
4788	Schreiber, Lisa G.	3736D	Assets/Messite	Paralegal
	Veltri, Patricia S.	3817E	Lit/Lincoln	Legal Tech
4706	Wollman, Jamie B.	3860	Lit/Miller	Attorney

Dana Baldwin, Randy McLaurin, Rhonda Rhodes, Patricia Veltri and Jamie Wollman will be joining us from private industry. Angela Dallin, Mark Posey, Norma Ramirez, Marie Reyes and Lisa Schreiber are transferring from the FDIC.



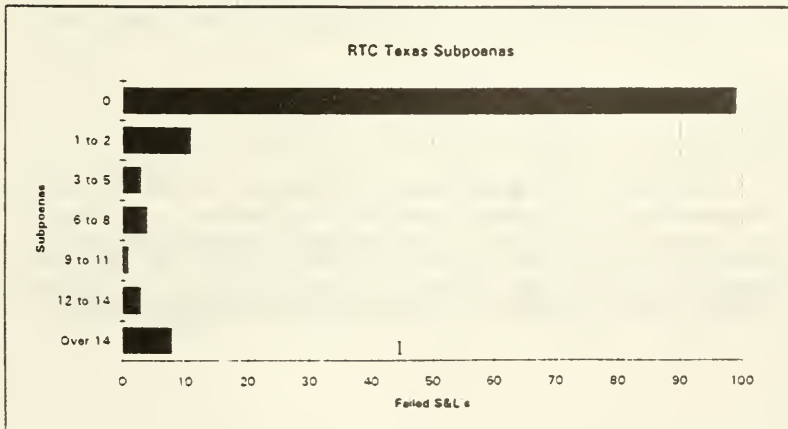
SUPPLEMENT TO THE STATEMENT OF
Thomas J. Burnside
 TO THE SENATE COMMITTEE
 ON BANKING, HOUSING AND URBAN AFFAIRS
 SEPTEMBER 30, 1993

I. RTC USE OF SUBPOENAS IN TEXAS

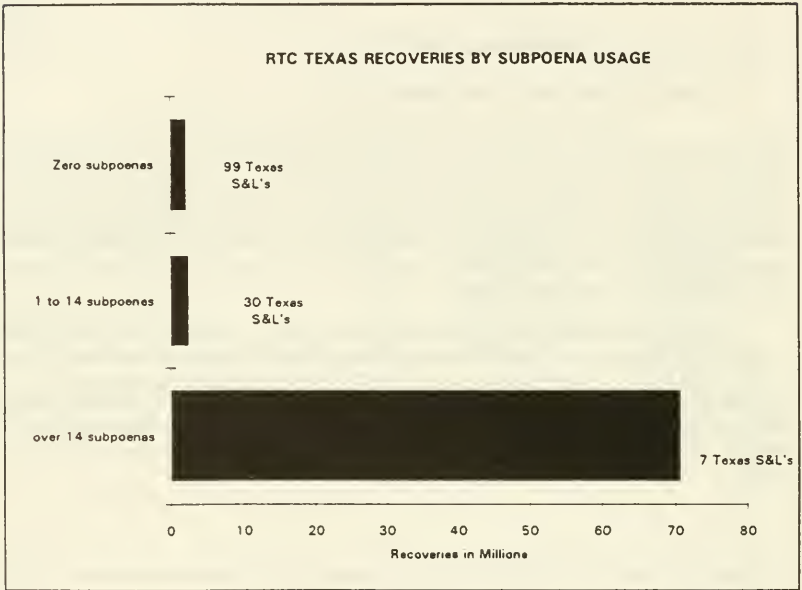
A. THE IMPORTANCE OF SUBPOENAS

As discussed in my earlier testimony, the administrative subpoena power is the RTC's most powerful tool in investigating and pursuing S&L wrongdoers. With subpoenas, the RTC can "follow the money trail" before ever making a decision on whether to pursue the claim. The successful trace of the "money trail" in Texas has resulted in most of the large recoveries. Perhaps more important, the aggressive use of subpoenas has resulted in the pursuit of highly culpable defendants while avoiding those cases involving less egregious conduct by those on the fringe of the S&L decision-making.

(1) **Financial Impact of Subpoenas on Texas Claims.** The RTC Texas field offices in Dallas, San Antonio, and Houston and the Dallas regional office handled the investigations of 129 failed S&L's. In 99 of those cases, the RTC failed to issue any administrative subpoenas from 1989 until 1993. In another 30 cases, the RTC engaged in some very limited subpoena usage. The RTC only aggressively used subpoenas (15 or more subpoenas per S&L) in 5% of its cases. The following table illustrates the use of subpoenas in Texas RTC thrifts:



The failure to issue any subpoenas in 99 Texas S&L's becomes even more shocking when contrasted with the distribution of recoveries according to subpoena usage. The RTC only aggressively used subpoenas in 5 % of its investigations; those seven investigations resulted in 93% of the Texas field recoveries.



¹ Washington D.C. retained direct control over an additional seven thrifts in Texas. I believe that several of those investigations used few, if any, subpoenas. Since Dallas did not track Washington subpoenas, however, I had insufficient information to include the D.C. cases in this analysis. Similarly, I could not analyze the Texas S&L's under FDIC control. I also believe that the FDIC had a low usage rate for subpoenas in Texas. The RTC and FDIC undoubtedly would be delighted to provide those figures to the Subcommittee if asked.

(2) Intangible Impact of Subpoenas on Texas Claims. The statistics only tell part of the story. The real importance of subpoenas comes when the RTC obtains the critical evidence needed to bust open a case. For example, the aggressive use of subpoenas generated the following items of proof on Texas RTC cases:

- ▶ An accountant's workpapers that revealed that two officers received eighteen million dollars in eighteen months;
- ▶ An investment banker's file that described an S&L owner's unsuccessful attempts to sell his real estate companies before he "sold" the companies to the S&L for \$70 million in cash and stock;
- ▶ Real estate records that proved that a developer "bought" raw land for \$13 million on a Friday and "sold" it to the S&L for \$26 million on Monday. (The RTC sold the land for about two million six years later)
- ▶ A key witness who placed the thrift owner at a negotiating table in a Dallas airport when none of the S&L records placed the owner anywhere near the transaction;
- ▶ Bank records of a Texas lawyer who laundered three million dollars of S&L loan proceeds so that the owner of the S&L could retain control of the S&L for another two years at an additional taxpayer cost of one hundred million dollars;

Not all subpoenas result in a home run. Often, the pursuit of the money trail is a tedious tracing of money from person to person until you identify everyone who was unjustly enriched by the transaction. In either case, however, the evidence gives the RTC an almost overwhelming advantage at the negotiating table or in the court room. Imagine having the testimony and records of one hundred witnesses before even filing the lawsuit. In one such case, the potential defendants faced with the prospect of defending against such a well-prepared RTC collectively paid the RTC over \$12 million without ever taking a deposition.

It is no accident that 93% of all RTC Texas field recoveries came in the few cases where the RTC aggressively subpoenaed evidence before suing. Likewise, it is not surprising that the RTC found "no evidence" of merit or net worth in most of the 99 cases in which it never issued a subpoena.

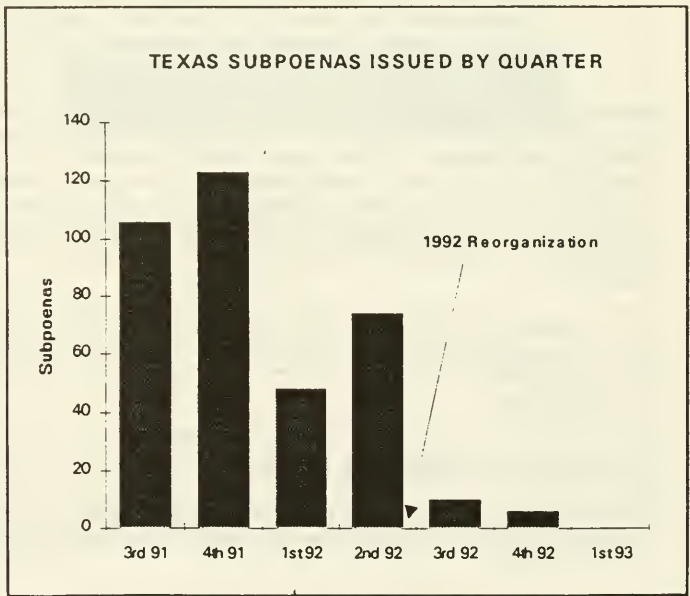
II. THE 1992 REORGANIZATION

The RTC Inspector General's report on the 1992 PLS purge provides a chilling portrait of senior RTC managers who destroyed the Professional Liability program in a quest for

personal power and revenge. The impact of the reorganization nationally was devastating. "Overall, PLS lost approximately 50 percent of its experienced trained attorneys, replaced three of its top four senior field managers, and transferred 43% of its caseload from one attorney to another."

The impact of the reorganization in Dallas is even more dramatic. Between May of 1992 and October of 1993, the RTC has transferred almost 100% of its Texas caseload to attorneys hired after the 1992 reorganization. Almost 80% of the PLS line attorneys currently in Dallas joined the program since March of this year. Two attorneys from Kansas City have assumed control over Dallas PLS and are frantically applying Band-Aids to a program that lacked any supervision for over a year. Despite the disintegration of the Texas program, however, the RTC still proudly boasts that its "increased staffing" proves its continuing commitment to the program.

The 1992 purge of PLS directly effected the use of subpoenas on Texas cases. On June 1, 1992, the statutes of limitations on Texas S&L's with 64% of the total assets under RTC control were still alive. Yet, the use of subpoenas on Texas investigations dropped to almost zero. Indeed, excluding my subpoenas, Texas RTC lawyers issued only ten subpoenas for the seven months following the reorganization.



The natural question that flows from the devastation of such a politically sensitive program is: What motivated the crippling purge?

Avoiding far more insidious motives, the RTC Inspector General found that an "internal struggle" or "friction" between PLS and the rest of the Legal Division "appeared to have been a significant factor in staffing decisions" in the 1992 reorganization:

"The former General Counsel's motive for returning career employees may have been well intended. However, in reality, other senior Legal Division managers used the process to return PLS employees they did not want without regard to the intent of the "put back" process or the professional liability work that remained to be done. The Legal Division's process for selecting employees to be returned to FDIC was *subjective and poorly managed*. Legal Division managers met on May 5, 1992, and, using the newly developed organization chart, selected who they wanted to fill the various attorney positions in the six field supersites. *This was characterized by one attendee as a meeting to get rid of people they did not want*. The former general Counsel did not get involved with this process.

Selections for PLS groups were made without using criteria, standards, or guidelines and without regard for the workload. In the Denver and Atlanta regions, where relations between the PLS and the top Legal Division management were already strained, "put back" *decisions had the appearance of management taking an opportunity to return PLS employees that were not perceived as "team players."* In several cases, it appears that senior management based staffing and put back decisions on prior working relationships and did not use analysis of office staffing needs or expected workload to make PLS staffing decisions."

.....

Also, some management decisions involving reassignment of PLS attorneys appear to have been *based on personal preferences* rather than a reasoned agenda for minimizing the effects of the reorganization on the PLS workload. In Atlanta and Denver, as discussed previously, PLS managers and regional counsel had *been at odds* regarding management of the PLS. *These differences, more than concerns for the professional liability program itself seemed to have influenced staffing decisions."*

We have yet to see any of these RTC legal managers who destroyed a program for personal power suffer any consequences for their actions. Most of the managers remain in control at the RTC or are seeking refuge from taxpayer wrath at the FDIC. How can such legal managers who crippled the RTC for personal reasons go unpunished? Does the label "just turf battles" somehow exonerate legal managers from responsibility for the fate of the RTC Professional Liability program?

III. FAILURE TO ACT AS A TEAM

The Investigations Unit in Dallas is the heart and soul of the remaining Texas cases. The collective experience of the investigative staff is one of the chief remaining assets of the Texas program. Many investigators have between ten and twenty years "hands-on" experience with Texas S&L's and bring invaluable insight into accounting, regulatory, lending, real estate, and other specialized areas crucial to the development of viable claims. Additionally, the almost complete turnover in Dallas PLS lawyers has forced the Dallas investigators to become the last remaining effective RTC supervision of the cases. Simply stated, the Investigations Unit is the RTC's "institutional memory" on the Texas cases.

Perhaps more important, the Dallas investigators have become the RTC's conscience on the Texas cases. Rather than blindly promoting a rigid "aggressive-conservative" litmus test to professional liability decisions, they sought to examine the facts of each case on its merits. If they saw a case they believed was improperly filed, they attempted to stop it. Conversely, they resisted the closure of cases without adequate investigation. Now, they have dared to protest the systemic collapse of the Texas cases --- whether because of gross mismanagement or otherwise ---by cooperating with the GAO and this Subcommittee in their investigations of the Texas problems.

The cooperation has its price. Almost one year after the PLS purge of 1992, the RTC Investigations Unit apparently has begun its own purge. As punishment for the Dallas cooperation with the United States Senate and the Government Accounting Office inquiries, the RTC managers have "reorganized" Dallas Investigations. RTC Director of Investigations James Dudine has sent a "shadow" management team from Washington and Kansas City to Dallas and more than doubled the size of the Dallas Investigations' management group. The old managers have now found their staff cut by 75%.

Further, Dudine has endorsed the Legal Division's efforts to "shun" the Investigations management who first reported the Dallas debacle within the RTC and, then later to GAO and Congress. In July, Dudine overtly sought to "...explore options available to *insulate Jones and Mendoza from direct contact and 'client-like' responsibility over PLS case.*" As if isolation is not enough, RTC management has now descended upon Dallas Investigations in search of "leaks" or, as is more common here in Missouri, "broken levees on the Mississippi."

Meanwhile, subpoenas are not issued. Cases languish. And experienced RTC employees increase efforts to leave the devastated Texas program. History repeats itself.



RESOLUTION TRUST CORPORATION

*Resolving The Crisis
Restoring The Confidence*

March 23, 1993

Thomas Hindes
Assistant General Counsel
Professional Liability Section
RESOLUTION TRUST CORPORATION
1717 H Street, 10th Floor
Washington, D.C. 20006

Re: Resignation in Protest

Dear Tom:

For the reasons set forth in my memoranda of March 18, 1993 and March 3, 1993, I do not believe that I can work effectively for the Resolution Trust Corporation any longer. Accordingly, I hereby submit my resignation from the RTC as of April 4, 1993 (or at some other mutually acceptable date.)

I attach the memoranda of March 18 and 3 as an integral part of this resignation letter and strongly urge you to look into this matter further. As we discussed, I would like to have an exit interview with you in Washington to explain more fully my views on the situation down here and the reasons for my resignation in protest. Please advise me of a convenient time for such exit interview.

I look forward to our meeting.

Sincerely yours,

Thomas W. Burnside

Thomas W. Burnside

Enclosure

cc: William DePugh (with enclosures)
Diane Mendoza "
Chris Jones "
Mark Gabrellian "
Arturo Vera-Rojas "
David Stockwell "
D. Rex Taylor "
Mark Greenwald "
Bruce Pederson ")
Thomas Bambrick "
Wayne Fogle "
John Adair "
Edward Stephenson "

BACKGROUND ON TEXAS'S S&L's

A Never Ending Story

An Introduction to the S&L Symposium

by

G. Christian Hill

Despite the hundreds of articles written about the causes and implications of the thrift debacle, it remains a disaster with a continuing capacity to surprise and confound. Several hundred savings and loan associations (S&Ls) considered likely to survive just a year ago are now failing or distressed. Reliable estimates of the total 10-year cost of resolving failed S&Ls are now more than double the \$157 billion predicted in August 1989.

There is a widespread misunderstanding of the history and future of this financially cataclysmic event, partly because those responsible for it—thrift operators, regulators, accountants, and politicians, among others—have assiduously sought to minimize and misrepresent their contributions to the problem. They have tended to blame each other—accurately as it turns out—for negligence, delay, and deferral.

But this invidious process has obscured the more fundamental flaws, in the way our financial system operates and the way it is politically administered, that fostered the thrift debacle. Because several of the

root causes of the debacle have not been addressed, the intended solution to the crisis, the Financial Reform, Recovery, and Enforcement Act of 1989 (FIRREA), is no more than a stop-gap measure. Moreover, it falls far short of paying for the losses that will actually be incurred over the next decade. FIRREA II is apt to be near the top of Congress's political agenda by fall 1991.

Thus, the *Stanford Law & Policy Review's* symposium on the thrift debacle is a particularly timely and useful exercise. Much remains to be done in terms of policy making and assessing causes and costs. Many of the articles assembled here illuminate the likely problems of the future by distinguishing between secondary and primary causes of the thrift crisis.

There is common agreement that the biggest mistakes leading to the thrift crisis were the decisions by the Federal Home Loan Bank Board (FHLBB), from 1980 to 1989, to allow savings and loan associations to operate with little or no capital, and the FHLBB's inability to supervise these institutions as they ran amuck. The amazing and perverse history of capital forbearance is well summarized in the presentation of William Black, general counsel for the Federal Home

Mr. Hill is the San Francisco Bureau Chief of *The Wall Street Journal*. He has covered thrift issues since 1979.

Loan Bank of San Francisco, in his paper, "Ending Our Forebearers' Forbearances." From 1980 to 1982, through a series of accounting deceptions, the bank board under then-chairman Richard Pratt actually turned losses into assets, allowing essentially insolvent S&Ls to continue to operate. Yet no provisions were made for the huge increases in supervision required by such a policy.

Some commentators give credit to a subsequent chairman, Edwin Gray, for trying to reverse the process of deception from 1984 to 1987, but members of Mr. Gray's own staff concede that his efforts were too little, too late, and too politically ineffectual. They say that he himself attempted to suppress studies in early 1985 showing the thrifts' deposit insurance fund was insolvent. (Mr. Gray provides his own interpretation of events in an article in this symposium.)

Under the last chairman, M. Danny Wall, more financial alchemy was practiced, this time to "resolve" insolvent thrifts by writing a 10-year blank check for their losses in assisted sales, using notes that obligated the Federal Savings and Loan Insurance Corporation (FSLIC) to pay money it didn't have. Mr. Wall repeatedly denied that the insurance fund was bankrupt, in the face of overwhelming evidence dating all the way back to early 1985. (A director of the Federal Home Loan Bank in Cincinnati wrote in 1985 that "some of my colleagues worry that the FSLIC is broke. I don't worry. I know it's broke.") The failure to adequately supervise S&Ls lasted right up to the passage of FIRREA in August, allowing S&Ls such as Lincoln Savings, Columbia Savings, and Centrust Savings to place huge new bets on junk bonds and direct real estate investments, and to rack up huge new losses, as late as the second quarter of 1989.

Mr. Black notes that the "problem with this kind of deceit is that the regulatory agency comes to believe its own lies." But that is perhaps a too charitable view of what happened to these regulators. They often knew lies from truth, but felt beholden to the political administration that appointed them to keep a lid on the problems. They also realized that Congress itself, in the thrall of lobbyists and campaign contributors, was not receptive to radical solutions.

The capital forbearances, the lack of supervision, and the misrepresentations to the public were driven by the most fundamental cause of all—a flawed political process. The articles by Mr. Gray, Joseph Grundfest, Michael Waldman, and Thomas Romer and Barry Weingast, taken together, give a well-rounded view of the complicity of the administration and Congress in the crisis. (Congressmen who led

the effort to include forbearances in the 1985 FSLIC recapitalization legislation now pillory regulators for delays in closing down thrifts.)

Even Charles Keating, Lincoln's chairman, has a telling point in noting that the patronage system resulted in the appointment of two FHLBB chairmen, Mr. Gray and Mr. Wall, whose only qualification was the assiduousness with which they served their political bosses. (In his own paper for the symposium, "The Quest for Truth," Mr. Keating draws the conclusion that these inexperienced regulators then destroyed the value of thrift assets by seizing innocent institutions, a conclusion unsupported by any other examination of the failures of the thrifts he names. In fact, most evidence suggests the opposite to be true—their inexperience led them to delay acting against the named institutions until their losses had mounted to huge sums.)

There are at least three other primary causes of the thrift debacle that typically receive little attention, but are examined in the symposium's presentations. The first is the lack of current market information about the value of assets owned by the thrift industry. Regulators, investors, and thrift operators often have little idea of the losses built into different assets, because these assets are valued on their historical cost rather than their current market value. As Mr. Grundfest, Donald Simonson and George Hempel, and Charles Schumer and J. Brian Graham point out in their respective articles, the failure to develop systematic models to estimate current values left regulators in the dark, and to this day makes supervision and reform of the deposit insurance system difficult.

Such reform is necessary, though, for deposit insurance is unique to the United States and is the root cause of many of the thrift industry's problems, as Messrs. Schumer and Graham and James Barth and R. Dan Brumbaugh note in their accompanying pieces. As long as S&Ls can easily attract funds because they are insured, regulators will be hard-pressed to supervise them. But beyond that, it is deposit insurance that has led to the most pressing problem for depository institutions: the tremendous overcapacity of lenders, driving down margins and encouraging the pursuit of risky loans.

One of the most effective ways to cure the problems created by insurance is to subject thrifts to the discipline of the financial markets by forcing them to either co-insure a small fraction of each deposit with private insurance companies or raise subordinated debt or other capital in those markets. The scrutiny of

A NEVER ENDING STORY

insurers and investors would eliminate much of the ability of operators to take poor risks, but co-insurance by the markets is only possible if the markets have enough good, current information for rational decision making.

Finally, there is a common underestimation of another primary cause of the thrift debacle—the extent to which the mortgage market is moribund. About 1,500 S&Ls excel at issuing mortgages, mainly because they are well-capitalized, low-cost providers in fairly healthy markets. The strength of these institutions is not widely understood. But the roughly 1,000 other S&Ls—a total twice that of the thrifts in

conservatorship and on the regulators' "watch list"—are having a very tough time earning profits on mortgages.

Their expenses are too high and their margins on loans are too low for two reasons: 1) ferocious competition fostered by the government mortgage agencies, Ginnie Mae, Fannie Mae, and Freddie Mac; 2) the need for the Federal Reserve Board to keep short-term rates relatively high compared to long-term rates, reducing the spread between deposit costs and mortgage yields. (This need did not exist before the abolition of interest-rate ceilings on savings in 1980-1981.)

As Messrs. Barth and Brumbaugh note in their article, "holding mortgages in savings and loan portfolios has been unprofitable, on average, since 1984." The group of marginally profitable mortgage lenders is at risk of slowly being ground into insolvency, a trend that encourages some to manipulate their assets to fake earnings, in the end increasing the cost of the thrift cleanup. A common example of asset manipulation is gains trading, the selling of good assets to generate profits while keeping the worst assets on the books at historical costs. Centrust Savings, for instance, reported capital right up until the time it was seized by regulators early this year, but gains trading has turned the institution into a hollow husk, with real assets worth \$2 billion less than liabilities. Even more ominously, this group of weaklings will quickly self-immolate when (not if) short-term rates significantly exceed long-term rates for a considerable length of time.

FIRREA only addresses one fundamental cause of the thrift debacle—the lack of capital. It does not reform the political process and, in effect, increases political influence over regulatory decisions by placing the Office of Thrift Supervision (OTS) and the Resolution Trust Corporation (RTC) under the control of the Treasury.

Table 1. Cost Estimates of the Thrift Rescue for 1989-1999
(Billions of Dollars)

	Date of Estimate	
	July 1989	May 1990 ^c
<i>Uses of Funds</i>		
Zero-coupons to repay non-Treasury debt	\$6.0	\$11.0
Interest on non-Treasury debt ^a	56.3	92.7
Old case expense	49.5	68.0 ^c
New case expense (cases after Jan. 1990)	74.0	124.0
Savings Association Insurance Fund	8.8	8.8
Administrative costs	2.8	19.0 ^c
Interest on working capital debt	0.0	28.0 ^c
Lost tax revenues from FSLIC deals	0.0	9.0 ^c
Treasury interest	0.0	95.8 ^b
TOTAL	\$197.4	\$456.3
<i>Sources of Funds</i>		
Proceeds from non-Treasury bonds	\$57.1	\$107.1
Proceeds from receiverships, asset sales	21.7	21.7
Thrift premium income	30.9	30.9
FHLB contributions	5.1	5.1
Miscellaneous revenue, including bank insurance premiums, more FHLB funds	4.6	41.0
Treasury funds	78.0	250.5
TOTAL	\$197.4	\$456.3

^a Assumes that new-case expense increases by \$50 billion, resulting in an additional \$50 billion of RTC bonds, and that non-Treasury sources are found to pay for the additional non-Treasury interest expense.

^b Assumes non-Treasury borrowing at 8.75% and Treasury borrowing at 8.5%, in roughly equal annual amounts over the first six years, to finance all revenue shortfalls. The interest rate assumptions are conservatively low.

^c New General Accounting Office estimates.

SOURCE: Calculations based on reports by the Office of Management and Budget, the General Accounting Office, and the U.S. League of Savings Institutions.

The new OTS director, nominated by President Bush, is a former labor lawyer with even less direct experience than his ill-fated predecessors. FIRREA does not provide for mark-to-market accounting systems, nor for deposit insurance reform.

FIRREA actually increases S&Ls' exposure to the mortgage market by raising the amount of required mortgage-related assets from 65 percent to 70 percent while prohibiting even savvy, healthy thrifts from making many other forms of investment. By devaluing the thrift charter in this and other ways, FIRREA greatly increases the costs of closing and selling S&Ls.

The Bush administration, in the time-honored tradition of FHLBB chairmen, has consistently misrepresented and underestimated the cost of the thrift rescue. When the rescue plan was officially unveiled early last year, the administration said the plan would provide \$90 billion. Later, the Office of Management and Budget said the legislation would cost \$157 billion, but that figure excluded off-budget spending that raised the total to \$197 billion.

It is now clear that even this amount is grossly inadequate. The RTC has already allocated \$44 billion of its budgeted \$50 billion to resolve the first group of cases, with another 300 to 600 cases coming down the pike. Messrs. Barth and Brumbaugh calculate that, based on the historical costs of closing down thrifts, the ultimate tab for cases resolved after 1988 could range from \$140 billion to as high as \$190 billion. Moreover, other cost estimates, such as those for administration and financing thrift-assistance agreements completed prior to 1989, have ballooned.

Table 1 shows how another \$50 billion of RTC costs, when added to other costs, results in likely total spending over the next decade of nearly \$360 billion. As the table indicates, the Bush administration estimated, using optimistic assumptions about income sources, that the thrift industry could finance roughly 60 percent of the \$197 billion originally budgeted for the cleanup. But the Treasury will have to pay for most of the overrun beyond \$197 billion.

The cost of the thrift rescue is being financed with a combination of U.S. Treasury debt and non-Treasury debt (issued by the Resolution Funding Corporation), a distinction discussed by Kenneth Ryder in his article. Because the financing is with 30- to 40-year bonds, interest costs will continue

Table 2. Cost of the Thrift Rescue
Over 40 Years: 1989-2029
(Billions of Dollars)

1989-1999 Costs (from Table 1)	\$456.3
Non-Treasury Debt, 2000-2029	274.8
Treasury Debt, 2000-2029	<u>638.8</u>
Total 40 Year Cost	\$1369.9

NOTE: Calculation assumes that all costs except interest end by 1999. It excludes the interest costs of borrowing to pay Treasury interest (i.e., the compounding effect of paying interest on interest).

nearly to the year 2030, reaching a grotesque total of more than \$1 trillion. (See Table 2.)

As the head of the General Accounting Office said in early April, the funding provided under FIRREA amounted to a level that would allow the Bush administration to meet politically sensitive deficit-reduction goals and had little to do with the amount actually needed to close and sell insolvent thrifts. Now, as in previous years, the lack of liquidity is driving regulators to delaying tactics. The RTC has recently conceded that it may defer handling the most expensive cases in the future, selling the least insolvent thrifts first. There is some evidence, as Messrs. Barth and Brumbaugh point out, that the OTS is delaying transfer of more basket cases to the RTC. As a strategy, it may be proper to defer resolution of adequately supervised S&Ls, but the administration should not try to use this method to hide the actual costs of the program.

The huge funding shortfall has significant policy implications. It suggests that a tax increase is necessary to avoid the onerous interest charges associated with financing through the federal deficit, which in effect requires paying interest on interest, compounding ultimate costs. It suggests that the commercial banks' deposit insurance fund may be expropriated at some point to help finance the cleanup, as will additional income of healthy thrifts and their federal home loan banks.

In sum, as Messrs. Barth and Brumbaugh accurately predict, FIRREA as both a funding vehicle and a policy instrument "will soon be recognized as one more mutation of the problem." ▲

Stuck With the Tab . . . Part III:

The S&L Bailout Continues

Lara Thyagarajan

Legislative Assistant

Northeast-Midwest Congressional Coalition

May 1993

RECEIVED MAR 16 1993

Stuck with the Tab . . . Again

The savings and loan bailout is now in its seventh year. Since 1986 the federal government has closed, merged, or stabilized 654 insolvent thrifts at an estimated cost of \$122.80 billion. No doubt the bailout has been the nation's largest financial disaster. Less well understood is that the bailout transferred enormous wealth from the Northeast-Midwest region to Texas and a few other Sunbelt states.

Although Texas pays just 6.1 percent of the nation's taxes, the state's insolvent S&Ls have accounted for 41.2 percent of the bailout's total costs from 1986 to 1992. The 18 states of the Northeast-Midwest region, in contrast, shoulder 46.5 percent of the tax burden but were responsible for only 15.3 percent of the costs.

The Congressional Budget Office and the Congressional Research Service estimate that the American taxpayer will pick up at least 70 percent of the bailout costs, with the remainder covered by insurance premiums from the thrift industry. Thus, of the \$122.80 billion in total costs, the nation's taxpayers have paid \$85.96 billion. The single state of Texas, responsible for \$50.59 billion of the cost of thrift resolutions, will pay only \$5.28 billion. (The next most burdensome state, California, shouldered \$15.70 billion of the blame and \$11.48 billion of the burden.) Stuck with the tab were the 18 northeastern and midwestern states, which were responsible for \$18.82 billion of the 1986-92 cost, but which paid \$40.00 billion of the bailout.

Texans point to the collapse of oil prices in the 1980s and the accompanying regional recession as the primary cause of their S&L industry's woes. National policies deregulating the thrift industry, they say, encouraged a tolerance for high risks that turned into disaster when the collapse came. And they argue that the nation came to the aid of both New York City and Chrysler Corp. when they reached the financial brink.

Yet plenty of other states suffered economically in the 1980s, but their S&Ls didn't become basket cases. Texas simply dropped the regulatory reins on its state-chartered S&Ls, encouraging an orgy of speculative and insupportable investment. While depositors surely must be protected, no one should overlook the fact that Texas thrifts sponsored, in essence, an economic development program for which the rest of the country must pay. Finally, the federal government made money from both the Chrysler and New York City bailouts, while the S&L bailout will cost taxpayers more than \$100 billion.

The Blame and the Burden for the S&L Crisis
(in thousands of dollars)

	Total Blame 1986-1992	Percent of U.S. Total	Percent of 1992 U.S. Tax Burden	Burden of the S&L Crisis ¹
New England				
Connecticut	145,639	0.12	1.99	1,710,612
Maine	13,957	0.01	0.42	361,034
Massachusetts	1,452,947	1.18	2.92	2,510,043
New Hampshire	19,592	0.02	0.49	421,206
Rhode Island	10,475	0.01	0.42	361,034
Vermont	0	0.00	0.21	180,517
Total	1,642,610	1.34	6.44	5,535,849
Mid-Atlantic				
Delaware	0	0.00	0.34	292,265
Maryland	833,793	0.68	2.28	1,959,897
New Jersey	3,214,203	2.62	4.42	3,799,449
New York	3,056,039	2.49	8.72	7,495,746
Pennsylvania	2,801,367	2.28	4.82	4,143,291
Total	9,905,402	8.07	20.58	17,690,647
Midwest				
Illinois	4,025,579	3.28	5.22	4,487,132
Indiana	180,109	0.15	1.94	1,667,631
Iowa	611,389	0.50	0.97	833,816
Michigan	220,726	0.18	3.73	3,206,322
Minnesota	1,176,268	0.96	1.78	1,530,095
Ohio	956,017	0.78	4.07	3,498,588
Wisconsin	100,706	0.08	1.81	1,555,853
Total	7,270,794	5.92	19.51	16,770,871
South				
Alabama	378,373	0.31	1.21	1,040,121
Arkansas	3,042,592	2.48	0.67	575,935
District of Columbia	n/a	n/a	0.31	266,477
Florida	8,647,791	7.04	5.20	4,469,940
Georgia	670,616	0.55	2.29	1,968,493
Kentucky	226,073	0.18	1.10	945,564
Louisiana	3,850,605	3.16	1.23	1,057,313
Mississippi	627,513	0.51	0.62	532,954
North Carolina	397,773	0.32	2.26	1,942,705
Oklahoma	2,443,898	1.99	0.99	851,008
South Carolina	111,165	0.09	1.06	911,180
Tennessee	359,996	0.28	1.62	1,392,558
Texas	50,557,124	41.19	6.14	5,277,968
Virginia	2,066,565	1.68	2.55	2,191,990
West Virginia	94,446	0.08	0.49	421,206
Total	73,514,530	59.87	27.74	23,845,411

Northeast-Midwest Report

Estimated Present Value Cost of RTC Thrift Resolutions
(in thousands of dollars)

	1986-1989	1990	1991	1992	Total Cost 1986-1992
New England					
Connecticut	0	34,994	48,549	62,096	145,639
Maine	0	0	13,957	0	13,957
Massachusetts	0	899,913	553,034	0	1,452,947
New Hampshire	0	0	19,592	0	19,592
Rhode Island	0	0	0	10,475	10,475
Vermont	0	0	0	0	0
Total	0	934,907	635,132	72,571	1,642,610
Mid-Atlantic					
Delaware	0	0	0	0	0
Maryland	69,000	376,805	372,653	15,335	833,793
New Jersey	285,000	70,803	2,710,893	147,507	3,214,203
New York	59,000	1,776,080	743,952	477,007	3,056,039
Pennsylvania	720,000	332,758	1,559,505	189,104	2,801,367
Total	1,133,000	2,556,446	5,387,003	828,953	9,905,402
Midwest					
Illinois	2,611,000	749,516	549,809	115,254	4,025,579
Indiana	145,000	34,415	0	694	180,109
Iowa	446,000	47,446	106,304	11,639	611,389
Michigan	188,000	31,058	0	1,668	220,726
Minnesota	299,000	872,710	4,558	0	1,176,268
Ohio	380,000	266,074	306,876	3,067	956,017
Wisconsin	0	86,192	0	14,514	100,706
Total	4,069,000	2,087,411	967,547	146,836	7,270,794
South					
Alabama	17,000	267,901	23,892	69,580	378,373
Arkansas	845,000	619,541	1,556,794	21,557	3,042,892
District of Columbia	n/a	n/a	n/a	n/a	n/a
Florida	2,527,000	2,252,368	2,440,712	1,427,711	8,647,791
Georgia	20,000	262,073	309,049	79,494	670,616
Kentucky	177,000	3,149	45,924	0	226,073
Louisiana	1,511,000	1,048,933	874,725	445,947	3,880,605
Mississippi	14,000	388,867	224,646	0	627,513
North Carolina	77,000	107,530	131,616	81,627	397,773
Oklahoma	1,665,000	250,345	400,833	127,720	2,443,898
South Carolina	2,000	0	109,165	0	111,165
Tennessee	34,000	108,503	27,188	170,305	339,996
Texas	29,674,000	10,428,365	10,129,648	355,111	50,587,124
Virginia	171,000	94,737	401,880	1,398,948	2,066,565
West Virginia	81,000	13,446	0	0	94,446
Total	36,815,000	15,845,758	16,676,072	4,178,000	73,514,830

Northeast-Midwest Report



RESOLUTION TRUST CORPORATION

**Resolving The Crisis
Restoring The Confidence**

Office of Investigations

1993 Semi-Annual Report

Progress Report on Professional Conduct Investigations

June 30, 1993

RTC CIVIL RECOVERY REPORT

Appendix I

Institution	City	St	Claim Type	Funds Received
Professional Liability Recoveries				
ABQ Bank, F.S.B.	Abuquerque	NM	D&O	2,000
ABQ Bank, F.S.B.	Albuquerque	NM	Bond	510,000
Alpine FS&LA	Steamboat	CO	Officer	714
Ambassador S&LA	Tamara	FL	Accountant	20,000
American Home S&L	Edmonton	OK	D&O/Attorney	856,000
American Pioneer	Orlando	FL	Accountant	35,920,000
American Savings/Colorado	Colorado Spngs	CO	Attorney	1,700,000
American Savings/Colorado	Colorado Spngs	CO	D&O/Att	1,900,000
American Security FS&LA	Chicago	IL	Commodities	76,000
American Security FS&LA	Chicago	IL	Securities	929,894
American S&LA of Brazoria	Lake Jackson	TX	D&O	400,000
Amerifirst FS&LA	Miami	FL	Bond	688,718
Amerifirst FS&LA	Miami	FL	Accountant	3,802,500
AmeriMac Savings Bank	Hillsboro	IL	D&O	226,008
Anchor Savings Assoc.	Kansas City	KS	Bond	257,363
Banc Iowa FSB	Cedar Rapids	IA	D&O	8,750
BancPlus FSA	Pasadena	TX	D&O	150,000
BancPlus FSA	Pasadena	TX	D&O	300,000
BancPlus FSA	Pasadena	TX	Other	2,500,000
BancPlus FSA	Pasadena	TX	Accountant	3,550,000
BancPlus FSA	Pasadena	TX	Other	5,000,000
Benjamin Franklin FSA	Houston	TX	Bond	2,150,000
Bexar SA	San Antonio	TX	D&O	550,000
Bexar SA	San Antonio	TX	D&O	2,700,000
Bexar SA	San Antonio	TX	D&O	3,250,000
Bexar SA	San Antonio	TX	Accountant	43,690,000
Black Hawk S&LA	Rock Island	IL	D&O	175,000
Blue Valley FS&LA	Kansas City	MO	D&O	5,000
Blue Valley FS&LA	Kansas City	MO	D&O	5,000
Blue Valley FS&LA	Kansas City	MO	D&O	105,000
Caguas Central	San Juan	PR	Accountant	5,070,000
Capitol Federal	Aurora	CO	Accountant	1,010,000
Centennial SB	Greenville	TX	Securities	1,497,600
Center S&LA	Clifton	NJ	Securities	166,600
Central Texas S&L	Waco	TX	D&O	1,000,000
CentTrust FSB	Miami	FL	Other	951,657
CentTrust FSB	Miami	FL	Indemnity	15,000,000
Century Federal	Trenton	TN	Bond/D&O	660,000
Century Federal	Trenton	TN	Accountant	825,000

RTC CIVIL RECOVERY REPORT

Appendix 1

Institution	City	St	Claim Type	Funds Received
Century Savings	Baytown	TX	Bond	1,035,000
Chillicothe FS&LA	Chillicothe	IL	D&O	18,000
City Savings, FSB	Bedminster	NJ	D&O	487,809
Colonial FS	Roselle Park	NJ	Securities	84,000
Columbia	Webster	TX	Bond	38,500
Columbia Savings Assoc.	Beverly Hills	CA	Bond	18,750,000
Com Fed Savings Bank	Lowell	MA	D&O	24,000
Commerce FSA	San Antonio	TX	D&O	620,000
Commerce FSA	San Antonio	TX	Brok. Liab	3,700,000
Commonwealth FSA	Houston	TX	Appraiser	150,000
Community S&LA	Fond du Lac	WI	Attorney	920,000
Concordia Federal	Lansing	IL	Other	131,500
Concord-Liberty Fed. S&L	Monroeville	PA	Attorney	50,000
Continental FSLA	Edmond	OK	Attorney	25,000
Crossroads S&L	Chocolah	OK	Bond	65,000
Deposit Trust SB	Monroe	LA	Other	151,527
Deposit Trust SB	Monroe	LA	D&O	750,000
Deseret S&L	Salt Lake City	UT	D&O	700,000
East Texas S&LA	Tyler	TX	Securities	2,246,400
El Paso SA	El Paso	TX	D&O	15,000
Elysian FSB	Hoboken	NJ	Bond	941,573
Enterprise FS&LA	Martero	LA	Attorney	600
Enterprise FS&LA	Martero	LA	Bond	700,000
Enterprise FS&LA	Martero	LA	Bond	700,000
Family S&LA	Seattle	WA	Securities	46,800
Federal SB of Virginia	Falls Church	VA	Attorney	43,460
Fidelity FS&LA	Galesburg	IL	D&O	60,000
Fidelity FS&LA	Galesburg	IL	Securities	280,800
Fidelity S&LA	Port Arthur	TX	D&O	600,000
Financial FS	Joplin	MO	D&O	100,000
First Annapolis SB, FSB	Annapolis	MD	Attorney	200,000
First FSB	Diamondville	WY	Bond	430,000
First FSB of Kansas	Wellington	KS	D&O	118,000
First FS&LA	Malvern	AR	D&O	380,000
First FS&LA of Atlanta	Atlanta	GA	D&O	774,867
First FS&LA-Colorado Springs	Colorado Springs	CO	D&O	13,500
First FS&LA of Largo	Largo	FL	Bond	725,000
First Network Savings	Los Angeles	CA	D&O	106,349
First Saving-Independence	Independence	MO	Bond	705,000
First State SB	Mountain Home	AR	Appraiser	550,000
First State SB	Mountain Home	AR	D&O	1,800,000

RTC CIVIL RECOVERY REPORT

Appendix I

Institution	City	St	Claim Type	Funds Received
Garnett S&LA	Garnett	KS	D&O	62,500
Gem City S&LA	Quincy	IL	D&O	180,000
Germanatown Trust	Germanatown	TN	D&O	700,000
Gill Savings Assoc.	San Antonio	TX	Attorney	1,850,000
Great Atlantic SB, FSB	Manteo	NC	Bond	125,385
Great Plains FSA	Weatherford	OK	Accountant	346,000
Hallmark, N. American	Plano/San Antonio	TX	Bond	100,000
Hallmark, N. American	Plano/San Antonio	TX	Accountant	850,000
Henderson Home	Henderson	KY	Bond	275,000
Hiawatha FSA	Hiawatha	KS	Bond	50,643
Hill Financial, SA	Red Hill	PA	D&O	36,957
Home FS&LA	Algona	IA	Bond	25,000
Home FS&LA	Algona	IA	D&O	100,000
Home Owners Savings Bank	Burlington	MA	Securities	985,000
Home SA of Kansas City	Kansas City	MO	Bond	30,265
Home Savings Bank FSB	Salt Lake City	UT	Bond	2,800,000
Illinois Savings Bank	Peoria	IL	Appraiser	22,000
Imperial Federal Savings	San Diego	CA	Securities	1,933,523
Imperial Federal Savings	San Diego	CA	Bond	5,000,000
Imperial Federal Savings	San Diego	CA	Accountant	19,120,000
Landmark Savings Bank	Hot Springs	AR	D&O	297,552
Libertyville FS&LA	Libertyville	IL	D&O	6,800,000
Lincoln FS&LA	Irvine	CA	D&O	15,000
Lincoln FS&LA	Irvine	CA	D&O	15,000
Lincoln FS&LA	Irvine	CA	D&O	30,000
Lincoln FS&LA	Irvine	CA	Attorney	50,000
Lincoln FS&LA	Irvine	CA	Attorney	350,000
Lincoln FS&LA	Irvine	CA	Appraiser	543,342
Lincoln FS&LA	Irvine	CA	Attorney	600,000
Lincoln FS&LA	Irvine	CA	D&O	1,858,408
Lincoln FS&LA	Irvine	CA	D&O	2,522,461
Lincoln FS&LA	Irvine	CA	Accountant	3,038,441
Lincoln FS&LA	Irvine	CA	Other	4,091,339
Lincoln FS&LA	Irvine	CA	Attorney	5,025,397
Lincoln FS&LA	Irvine	CA	Other	5,368,567
Lincoln FS&LA	Irvine	CA	Other	6,248,285
Lincoln FS&LA	Irvine	CA	Attorney	7,500,000
Lincoln FS&LA	Irvine	CA	Attorney	20,000,000
Lincoln FS&LA	Irvine	CA	Attorney	29,401,911
Lincoln FS&LA	Irvine	CA	Accountant	37,857,908
Lincoln FS&LA	Mt. Carmel	TN	D&O	200,000

RTC CIVIL RECOVERY REPORT

Appendix I

Institution	City	St	Claim Type	Funds Received
Madison Guaranty Savings	Augusta	AR	Accountant	1,025,000
Malibu Savings Bank	Costa Mesa	CA	Accountant	330,000
MesaBank Federal Savings	Phoenix	AZ	Bond	1,136,641
MeritBanc SA	Houston	TX	Accountant	2,010,000
Midwest Federal Savings	Minneapolis	MN	D&O/GTA	4,857,351
Midwest Federal Savings	Minneapolis	MN	Att/GTA	8,778,798
Mid-Kansas S&LA	Wichita	KS	D&O	47,500
Mississippi Savings	Batesville	MS	D&O	100,000
Mississippi Savings	Batesville	MS	D&O	500,000
New Athens S&LA	New Athens	IL	Securities	93,600
New Braunfels S&LA	New Braunfels	TX	Bond	17,500
New Guaranty FS&LA	Taylor	MI	D&O	1,250,117
Nile Valley Federal Sav.	Scotsbluff	NE	Appraiser	281,622
Nile Valley Federal Sav.	Scotsbluff	NE	Attorney	800,000
Nile Valley Federal Sav.	Scotsbluff	NE	Attorney	887,000
North American FSA	San Antonio	TX	Bond	17,500
Nowlin Savings	North Richland	TX	Bond	300,000
Peoples Bank for Savings	Streator	IL	Bond	510,000
Peoples Federal Savings	Bartlesville	OK	Accountant	17,500
Peoples FSB	Hampton	VA	D&O	615,000
Peoples Heritage	Salina	KS	Attorney	25,000
Peoples Heritage	Salina	KS	D&O	137,500
Peoples Heritage	Salina	KS	D&O	137,500
Peoples Heritage	Salina	KS	D&O	153,408
Peoples Heritage	Salina	KS	D&O	650,000
Peoples Heritage	Salina	KS	D&O	2,860,000
Pima FS&LA	Tucson	AZ	Other	25,000
Pima FS&LA	Tucson	AZ	Other	68,283
Pima FS&LA	Tucson	AZ	Other	68,500
Pima FS&LA	Tucson	AZ	Accountant	4,730,000
Progressive FSB	Natchitoches	LA	Bond	525,000
Republic Bank for Savings	Jackson	MS	Accountant	135,000
Resource Savings	Denison	TX	D&O	121,750
Royal Palm	West Palm Beach	FL	D&O	53,479
Royal Palm	West Palm Beach	FL	Accountant	950,810
Royal Palm	West Palm Beach	FL	D&O	1,011,441
Royal Palm	West Palm Beach	FL	Attorney	8,457,577
San Jacinto SA	Houston	TX	Attorney	25,000
Security Savings	Waterbury	CT	Accountant	430,000
Sioux Valley S&LA	Cherokee	IA	Bond	875,000
Southeastern FSB	Charlotte	NC	Accountant	630,000

RTC CIVIL RECOVERY REPORT

Appendix I

Institution	City	St	Claim Type	Funds Received
Spindletop SA	Beaumont	TX	Securities	488,000
State Mutual FS&LA	Jackson	MS	Bond	390,285
Statesman FSB	Waterloo	IA	Bond	125,000
San Savings Assoc., FA	Kansas City	KS	D&O	2,000
San Savings Assoc., FA	Kansas City	KS	D&O	100,000
San State Savings	Scottsdale	AZ	D&O	2,890,000
Timberland FSA	Nacogdoches	TX	D&O	276,000
Travis S&LA	San Antonio	TX	Securities	48,800
Trident Federal	Anoka Harbor	NJ	Securities	186,600
United FSB	Vienna	VA	Attorney	25,000
United Savings of America	Chicago	IL	D&O	33,000
United Savings of America	Chicago	IL	Bond	125,000
United Savings of America	Melbourne	FL	Accountant	1,690,000
University Savings	Houston	TX	Bond	5,500,000
Valley Savings Bank	Roswell	NM	D&O	3,000
Valley Savings Bank	Roswell	NM	D&O	38,000
Vermont Federal	Timonium	MD	Bond	250,000
Victoria SA	San Antonio	TX	Accountant	3,840,000
Vision Banc Savings	Kingsville	TX	Securities	52,000
Washington Savings	Stockton	CA	Bond	470,000
Western Gulf S&L	Bay City	TX	D&O	214,000
Western S&LA	Phoenix	AZ	Other	1,365,000
Williamsburg FS&LA	Salt Lake City	UT	Bond	1,000,000
PLS Recovery Total				408,320,045

Draxel Burnham Lambert-related Recoveries

Draxel Funds (combined)				43,151,688
Draxel Funds (combined)				1,500,000
Draxel Funds (combined)				12,876,763
Draxel - Reorganization				11,743,934
Draxel - Reorganization				3,837,328
Draxel - Reorganization				9,634,078
Draxel - Reorganization				172,600,000
CentTrust FSB	Miami	FL		4,568,818
CentTrust FSB	Miami	FL		299,314
Commonwealth FS&LA	Fl. Lauderdale	FL		6,000,000
Commonwealth FS&LA	Fl. Lauderdale	FL	Securities	534,375
Columbia Savings	Beverly Hills	CA	Securities	500,000
El Paso SA	El Paso	TX	Securities	266,470

HOW BIG IS THE S&L BAILOUT? BUSH ESTIMATE v. REALITY

The Resolution Trust Corporation (RTC), the agency responsible for cleaning up the nation's ailing thrift industry, is coming before Congress yet again to ask for more taxpayer dollars. This time the Administration is requesting \$42 billion, and is claiming that this latest installment will be enough to finish the cleanup job. But the RTC has been consistently wrong so far. The task of the RTC is far from over, and with the stagnant economy persisting there is every reason to believe that the thrift crisis will continue. How many of our tax dollars are going to pay for the greed, speculation, and self-dealing that occurred in the thrift industry in the Roaring 80's?

The Magnitude of the Bailout

- ♦ Congress has authorized \$88 billion for the RTC,
- ♦ \$15 billion is added to the budget each year to pay interest on the S&L Bailout,
- ♦ The RTC has borrowed \$53.8 billion in "working capital," which is the money borrowed from the Treasury against RTC assets to provide liquidity,
- ♦ And, the RTC has requested \$42 billion more for 1992.

Cost to the taxpayer to clean up some of the more notorious failed S&Ls (In billions):

Lincoln S&L	\$2.5
Centrust S&L	\$2.5
Siverado S&L	\$2
Vernon S&L	\$1.3

(note: these figures do not include either: 1) \$67 billion in sweetheart deals made by the regulators in 1988 to cover up the size of the crisis in an election year, or 2) the accrued interest costs from borrowing all the money to pay for the bailout which roughly triples the cost of the bailout.)

Bush Administration Estimates At Odds with Most Other Experts

The entire history of the S&L crisis has been one of wildly skewed and often inaccurate cost estimates by the Reagan and Bush Administrations. The current funding request is no different. While the Bush administration has lowered its estimate of the overall cost from \$160 to \$130 billion, the Congressional Budget Office (CBO), for example, has steadfastly held to its \$215 billion projection. Here's a sampling of various estimates of the cost to taxpayers:

- ♦ Albert V. Casey, CEO of the RTC, in 1992 -- \$130 billion without interest.
- ♦ William Seidman, Former Director of RTC, in 1991 -- \$220 billion without interest.
- ♦ Congressional Budget Office -- \$215 billion in 1990 dollars without interest.
- ♦ General Accounting Office -- \$500 billion for total clean up of the S&L crisis with interest.
- ♦ Economists convened by the Stanford Law and Policy Review -- \$1.37 trillion with interest.

First, funding the bailout through Treasury Department borrowing is much more expensive than paying for it now. As a result of this deficit financing, taxpayers will be forced to pay billions of dollars extra each year in interest payments alone.

According to a team of economists assembled by the Stanford Law and Policy Review,¹²⁰ the total cost of the S&L bailout over forty years could amount to \$1.3 trillion. Of that mind-boggling sum, over \$913 billion will be used to pay interest. The upsurge in federal borrowing has already helped keep interest rates high.

Second, borrowing the funds to pay for the bailout -- and then relying on the existing tax code to pay back the loan places the burden on the backs of the middle class and poor. Average citizens neither caused nor benefited from the policies that led to the industry's collapse. They did not benefit from the widespread looting of the S&Ls, nor did they benefit from the unprecedented wave of financial deregulation. Those in upper economic income brackets did benefit from these policies, through higher interest payments and expanded investment choices. But most families are net debtors, who suffer when real interest rates rise. Whatever benefits they gain from greater interest on savings accounts was overwhelmed by the higher interest they had to pay on their houses, cars, credit cards, and student loans. Average citizens should not get stuck with paying for fiascos they neither caused nor profited from.

Third, it is utterly irresponsible for the government to undertake this new monumental spending without regard to the impact on the federal budget deficit. The amount to be used this year -- \$80 billion -- is larger than the annual budgets of every federal cabinet department except the Department of Defense and the Department of Health and Human Services. Indeed, under the Budget Enforcement Act of 1990, when new spending is proposed -- for education, child care, transportation, or law enforcement -- it must be accompanied by new revenue to pay for it. But the S&L bailout and the bank bailout have thus far been treated as if they were minor technicalities, instead of the massive new government spending that they are. Late last year, Congress hastily passed the funding legislation with few reforms.

Recommendation

All financial bailouts should be funded on a "pay-as-you-go" basis. The Administration should be required to provide a plan to raise the necessary funds for financial bailouts. When the Administration formally requests additional funding for the RTC, Congress should require that it be accompanied with a plan to raise the revenues to pay for it just as all other funding requests for government programs require. No new funds should be authorized until the Administration presents its plan to pay for the bailout in the same year as Congress authorized the funds for it.

120 Hill, G. Christian. Stanford Law and Policy Review. "A Never Ending Story: An Introduction To The S&L Symposium," Spring 1990.

A number of factors call the Bush Administration's estimate into question. There are few indications that the economic condition of the thrifts has changed -- they are still undercapitalized and are still holding real estate that is decreasing in value. More specifically:

- ♦ The Administration underestimates the number of thrifts that will fail; CBO estimates are 400 to 500 higher than Office of Thrift Supervision.
- ♦ The feeble sales record of the RTC, which the LA Times estimated lost 40 cents on the dollar, guarantees even greater taxpayer backed costs.
- ♦ As the sale of assets winds down, the RTC will get an even lower rate of return as it sells less attractive assets.
- ♦ The cost estimate does not include the interest costs on the 30 year RTC bonds which fund the bailout and roughly triple the costs.

Bailout Cost Estimates Have Proven Unreliable; Administration Minimizes Costs During Election Years

Year	Administration's Estimated Cost (billions)	Authorized Funds (in billions)	Administration Comment
1988	\$0	\$0	M. Danny Walk: "We are within striking distance of having dealt with all the problems with the resources available."
1989	\$50	\$50	Former RTC Director, David Cooke: "\$50 billion represents the current cost of 'filling the hole'."
1990	\$130	\$0	
1991	\$160	\$38	William Siedman: "We see nothing that should cause us to revise our opinion that \$80 billion of additional loan funds appears to be sufficient for the RTC's needs."
1992	\$130	\$0	Albert V. Casey: "We won't come back for more."

(* = Presidential election)

The Administration Makes Its Case In Mid May

Albert V. Casey

"If they would just give us \$42 billion, we believe it will be enough to finish the job. We won't come back for more."

John E. Robson, Deputy Secretary of the Treasury

"I hope Al's right; I'd hate to go back to Congress again."

The House Banking Committee Responds Dubiously

Chairman, Rep. Henry B. Gonzalez (D-TX)

"The Administration has experienced great difficulty keeping its numbers straight on the savings and loan cleanup, either by design or incompetence. The history of missed projections may make it difficult to restore the agency's credibility."

Rep. Jim Leach (R-IA)

"Based on past experience, Congress applies limited credibility to Government estimates."

Rep. Bruce Vento (D-MN)

"I think they're definitely trying to gloss over it in the election year."

For more information contact Sherry Ettleson at Public Citizen's Congress Watch (202) 546-4998

Total Recoveries

Accountants	5	\$ 53,940,000
D & O	13	\$ 9,995,750
Bond	8	\$ 9,156,500
Attorney	2	\$ 1,675,000
Appraiser	1	\$ 150,000
Other	8	<u>\$ 15,510,800</u>
Total Texas	37	\$ 90,428,050

S. C. ... JAC ...

RECEIVED SEP 20 1993

THOMPSON & KNIGHT
 A PROFESSIONAL CORPORATION
 ATTORNEYS AND COUNSELORS

1700 PACIFIC AVENUE • SUITE 3300
 DALLAS, TEXAS 75201-4863
 (214) 969-1700
 FAX (214) 969-1751

DIRECT DIAL

AUSTIN
 FORT WORTH
 HOUSTON

(214) 969-1246

September 17, 1993

Mr. Thomas J. Burnside
 Reinert, Duree & Crane
 812 N. Collins
 Laclede's Landing
 St. Louis, Missouri 63102-2174

Dear Tom:

After the rather hurried ending of our conversation this morning, I reflected on the major conclusions or principles that I can mention that might help you in your testimony before the Senate Banking Committee. I will add only two to those we discussed.

The first is that, as a defense lawyer, I would much rather deal with a competent and prepared adversary such as you. I feel this leads to reasonable settlements of cases that should be settled, the opportunity for a decision not to file suits that should not be filed and an early understanding of situations where it is inevitable that suit must be filed and litigation pursued. Conversely, it is extremely frustrating (and it happens most of the time) to deal with attorneys who are not prepared, not knowledgeable on the facts, merely posturing, want a minimum of \$100 million to settle, no matter what the facts, etc. My reaction as a defense lawyer is that it is impossible to settle or even have a reasonable discussion in these situations and therefore, I simply prepare to litigate.

The other major principle is somewhat unrelated. I mentioned to you that I feel many RTC lawyers are not aware of the U.S. v. Berger injunction not to engage in a "win at any cost" approach to litigation. It is very troublesome to me when RTC lawyers, expressly or impliedly use the litigation resources of the federal government to attempt to pressure settlements, as opposed to using the facts of the case and legal theories that arise from the facts. A related principle is that I believe the RTC should not file lawsuits solely because it thinks it can win or because it believes it can extract money; instead, the lawsuit should have a reasonable moral justification as well. I believe the RTC has recently filed several litigations that it will not win and that have no moral justification. One of the worst examples is a suit in which the major complaint is an alleged lack of due diligence by an institution that acquired Dallas Federal Savings & Loan Association. There is no claim of fraud, ultra vires or other malfeasance;

THOMPSON & KNIGHT
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Mr. Thomas J. Burnside
September 17, 1993
Page 2

instead it is simply a claim of negligent underwriting. There are several reasons why I think this claim has no moral justification, apart from the fact that the RTC might get to the jury a fact question as to whether the directors committed negligence against the institution in the due diligence process. First, the Federal Home Loan Bank Board insisted on the usual rebuttal of control agreement. This effectively limited substantially the amount of due diligence that could be done. Second, it is bound to have known much more about Dallas Federal than the acquirer knew or could have learned as a result of any amount of due diligence, and it approved the merger. Third, it is undisputed that as a result of the merger there were very substantial cost savings by closing of office, firing of redundant personnel, etc. In effect, the acquirer took Dallas Federal off the government's hands and substantially reduced the ultimate loss to the government. The RTC attorneys say this does not matter, we are simply asserting a cause of action standing in the shoes of the acquiring corporation. In my view, this overall approach lacks moral justification.

Most citizens (including lawyers who defend these cases) applaud the efforts of the FDIC and RTC to pursue claims where there has been real misconduct. Such claims should be pursued vigorously. However, when these agencies bring lawsuits that are ill-conceived, ill-prepared or lack moral justification, it simply erodes people's confidence and trust in their government and its agencies. The short term problem of finding competent and successful directors to serve on boards is well known. I think the longer term problem may ultimately be far more harmful -- a permanent change in the attitude of citizens toward their government and its agencies and officials.

I hope this is of some help to you, Tom, in your testimony next week.

Very truly yours,


Schuyler B. Marshall

SBM:mae

I = Inherited Litigation
 M = PLS atty has decided a case exists
 S = PLS atty suspects a case exists
 N = PLS atty has decided no case exists
 C = Officially Closed
 Blank or "-" = Unknown

. Fidelity Bond Claim
 Accountant Malpractice
 Attorney Malpractice
 Security Broker
 Comm. Broker
 Appraiser
 Crim Referra
 Hi Profile
 OTS Da
 - - - - - 08/02/91
 S Y S S N N S Y Y 03/09/91
 Y Y I N N N N Y N 03/09/89
 - C - - - - N N 02/08/91
 S N N N N N N Y N 02/01/91
 M C M M C C N Y Y 03/09/89
 C C C C C C C Y N 07/20/89
 S C C S C C C Y N 03/09/90
 M C C S C C C Y N 03/09/89
 S S S - - - - - 04/19/91
 S C - - - - Y N 08/03/90
 C C C N N N N Y N 03/09/89
 M C N S S N S Y - 03/02/89
 C C C N N N N Y - 04/06/89
 I C S S N N N Y - 03/09/89
 N C N N N N N Y - 03/09/89
 C C C C C C C N - 08/03/90
 S C N N S N N Y - 12/07/90
 S C N S N N S N - 11/30/90
 S C S N N N N N - 08/31/90
 S C N N N N N - 11/30/89
 S C S S S N S Y N 03/09/89
 N C N N N N N N - 03/09/89
 N C S N N N N N - 01/04/90
 S N N S N N N Y - 03/09/89
 M C M M M M N - 04/06/89
 M C M N N N N Y Y 03/09/89
 S C S S N N S Y Y 03/02/89
 M C N N M M M Y Y 02/08/89
 S N - S - - - 05/31/91
 S C S S N N S Y - 07/27/89
 N C S N N N N Y Y 08/01/89
 N C N N S S N N - 04/06/89
 M C N M N N N - 04/06/89
 - - - - - 08/16/91
 N R N N N N N Y - 02/09/89
 S C S S S S S Y Y 01/11/90
 C C C C C C - - 03/09/89
 S C S S S N - - 03/22/91
 S S S S S N Y Y 10/26/90
 I I N N N N N Y - 03/09/89
 N N N N S N N Y - 12/21/89
 M C S R N S Y N 03/02/89
 M N M M N M Y N 03/09/89
 C C C N N N N - - 03/09/89

FIN	Institution	State	Size
	SC		334.
	SD		60.7
	TN		63.
	TN		20.4
	TN		17.
	TN		108.
	TN		218.
	TN		88.6
	TN		64.
	TN		1063.3
	TN		42.8
	TN		8.
	TX		373.
	TX		35.
	TX		213.
	TX		153.
	TX		21.
	TX		123.1
	TX		33.8
	TX		107.9
	TX		128.
	TX		633.
	TX		94.
	TX		71.7
	TX		40.
	TX		87.
	TX		2300.
	TX		624.
	TX		4000.
	TX		33.
	TX		328.
	TX		436.1
	TX		104.
	TX		202.
	TX		16.
	TX		61.
	TX		123.
	TX		67.
	TX		34.
	TX		217.
	TX		36.
	TX		74.
	TX		778.
	TX		1500.
	TX		232.

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Directors & Officers
 . Fidelity Bond Claim
 . . . Accountant Malpractice
 . . . Attorney Malpractice
 . . . Security Broker
 . . . Comm. Broker
 . . . Appraiser

FIN Institution

State Size

State	Size	Director	Officer	Referral	Hi Profile	OTS Da
TX	62.6	C	C	C	N	N
TX	64.	R	C	C	N	N
TX	45.	N	C	N	N	N
TX	216.	-	-	-	-	-
TX	68.7	S	C	C	N	N
TX	1233.	S	C	C	C	C
TX	31.	S	C	N	S	N
TX	229.	I	C	S	S	N
TX	803.	S	C	S	N	N
TX	88.	M	C	N	S	N
TX	1100.	S	C	-	-	-
TX	104.8	S	C	S	-	-
TX	85.	S	S	S	S	N
TX	99.	S	S	N	S	N
TX	103.	S	S	N	S	N
TX	226.9	S	R	N	N	S
TX	17.	N	C	N	N	N
TX	68.7	C	C	C	C	C
TX	30.	C	C	C	N	N
TX	88.	C	C	C	N	N
TX	274.	S	C	S	S	N
TX	174.	S	C	N	S	N
TX	447.1	M	C	S	S	N
TX	38.	S	C	S	N	N
TX	34.	Y	C	N	N	N
TX	2500.	S	C	S	N	N
TX	3493.5	S	N	S	S	S
TX	65.	S	C	N	N	N
TX	229.	C	C	C	N	N
TX	35.	N	C	N	N	N
TX	64.	N	C	N	N	N
TX	87.	C	C	C	N	N
TX	49.6	S	C	N	S	N
TX	43520.8	S	C	S	S	S
TX	139.	S	C	S	S	S
TX	184.	N	C	S	N	S
TX	92.	M	C	N	N	N
TX	13.5	N	C	N	N	N
TX	41.	M	C	N	S	N
TX	9120.2	N	N	N	N	N
TX	85.6	C	C	C	C	N
TX	309.1	S	C	C	N	N
TX	140.	S	C	N	S	N
TX	32.	S	N	N	N	N
TX	59.	S	C	N	N	N

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 . . . Security Broker
 Comm. Broker
 Appraiser
 Crim Referral
 HI Profile
 OTS Da

FIN Institution

State Size

TX	112.	I C S S N N	-	Y	-	07/12/89
TX	289.	S N S S	-	-	-	09/20/91
TX	49.	M C N N N N N	Y	-	-	03/16/89
TX	143.	2 S C S N N N N	Y	-	-	08/24/89
TX	267.	2 S C N N N N Y	N	-	-	09/21/89
TX	482.	4 S S S N N S	-	-	-	09/07/90
TX	140.	C C C C N N N N	Y	-	-	04/06/89
TX	17.	S C S N N N N	Y	-	-	11/09/90
TX	45.1	1 S C N S S N N	S	-	-	07/27/89
TX	288.	M C N N N N N	-	-	-	03/16/89
TX	67.	-	-	-	-	07/12/91
TX	110.3	S C S N N N N	Y	-	-	06/08/90
TX	93.	C C C C C C C	-	-	-	07/09/89
TX	89.	M N N M C C C	-	-	-	03/09/89
TX	220.	-	-	-	-	10/11/91
TX	89.9	C C C N N N N	-	-	-	03/16/90
TX	744.1	S N S S S N S	N	-	-	01/04/91
TX	235.5	S C S N N N N	Y	-	-	05/25/90
TX	280.	-	-	-	-	09/27/91
TX	350.4	6 S C S S N N N	B	-	-	08/24/90
TX	67.7	N C N N N N N	-	-	-	11/30/90
TX	148.	C C C C C C C	Y	-	-	09/21/89
TX	179.8	N C N N N N Y	-	-	-	05/13/90
TX	38.7	N C N N N N N	-	-	-	09/14/90
TX	134.	6 N C N N N N N	N	-	-	09/21/89
TX	70.8	S C S S N N S	Y	-	-	05/19/90
TX	383.	1 S C N N N N N	N	-	-	07/12/89
TX	52.	C C C C C N N	-	-	-	07/16/89
TX	171.	C C C C C C C	-	Y	-	09/14/89
TX	298.	N C S I N N N	Y	-	-	07/16/89
TX	54.4	C C N N S N N	-	-	-	11/30/90
TX	265.	M C S N N N S	Y	-	-	03/02/89
TX	87.6	2 S C N N N S	N	-	-	11/30/89
TX	47.	S C N N N N R	Y	-	-	03/16/89
TX	985.	Y C S Y N N N	Y	N	-	02/07/89
TX	17.	C C C N N N N	-	-	-	04/06/89
TX	29.	N C N N N N N	-	-	-	07/16/89
TX	25.7	C C C N N N N	-	-	-	08/17/89
TX	166.	6 S Y S S N N S	Y	Y	-	07/27/89
TX	27.5	C C C N N N N	-	-	-	08/17/89
TX	140.	1 C C C N N N N	N	-	-	04/06/89
TX	152.	S C S S N N N	N	-	-	09/21/9
TX	52.	N C N N N N N	Y	-	-	07/09/89
TX	124.	M C N N N N N	Y	-	-	07/16/89
TX	109.	S C N N N N N	-	-	-	07/16/89

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Directors & Officers													
Fidelity Bond Claim													
Accountant Malpractice													
Attorney Malpractice													
Security Broker													
Comm. Broker													
Appraiser													
Crim Referral													
Hi Profile													
OTS Data													
C	C	C	N	N	N	N	N	N	N	N	N	N	11/13/84
S	C	S	S	N	N	N	N	S	-	02/25/84			
S	C	S	S	N	N	N	N	-	-	03/11/90			
M	C	S	N	N	N	N	N	N	-	03/16/89			
S	C	N	S	S	-	-	N	-	06/29/90				
C	C	C	N	N	N	N	N	Y	-	03/09/85			
M	C	N	C	N	N	N	Y	Y	-	03/09/89			
Y	R	S	N	S	N	N	S	Y	N	02/08/89			
C	C	C	C	C	C	C	C	-	-	01/26/90			
S	C	S	S	N	N	N	N	Y	-	10/19/89			
S	C	S	S	N	N	S	S	Y	Y	06/29/83			
C	C	C	C	N	N	N	N	-	-	03/09/89			
C	C	C	N	N	N	R	N	Y	Y	03/02/85			
S	C	N	N	N	-	-	-	Y	-	03/09/85			
S	C	N	-	-	-	-	-	N	-	06/29/90			
M	N	N	N	N	N	N	N	Y	Y	02/17/89			
S	S	S	S	S	S	S	S	-	N	02/10/89			
S	Y	S	N	N	-	-	N	N	07/05/90				
C	C	C	N	N	N	N	-	-	-	02/17/89			
S	H	S	S	S	N	S	S	Y	-	01/26/90			
S	C	C	C	S	N	C	Y	N	12/08/89				
N	C	N	N	N	N	N	N	N	03/30/89				
C	-	-	-	-	-	-	-	N	02/01/91				
C	C	C	C	C	C	C	C	N	N	10/19/89			
S	C	N	C	C	C	C	Y	N	06/29/83				
S	C	S	C	S	S	C	N	N	10/19/89				
C	C	C	C	C	C	C	Y	N	03/02/91				
-	S	-	-	-	-	-	-	N	05/03/90				
S	N	-	-	N	N	-	-	-	-	01/23/84			
S	N	-	S	-	S	S	Y	Y	07/21/90				
S	N	N	N	S	S	S	N	N	02/08/90				
S	C	C	N	S	S	N	N	N	02/23/90				
C	C	S	N	N	N	N	N	N	03/21/89				
S	Y	S	I	-	-	S	Y	N	02/17/89				
C	C	C	C	C	C	S	N	N	03/30/89				
S	N	S	N	S	S	S	N	N	07/12/90				
-	-	-	-	-	-	-	-	-	-	09/12/90			
-	S	-	-	-	-	S	Y	-	-	02/23/90			
S	S	-	-	-	-	-	-	-	-	02/23/90			
S	H	S	S	S	-	-	Y	-	-	11/29/89			
S	C	S	N	N	N	S	N	N	02/22/90				
S	S	S	S	N	N	S	Y	N	08/10/90				
N	N	N	N	N	N	N	N	N	07/26/90				

FIN	Institution	State Size
	TX	214.
	TX	380.8
	TX	142.
	TX	52.1
	TX	329.8
	TX	85
	TX	119.
	TX	2600.
	TX	16.2
	TX	582.
	TX	882.85
	TX	75.
	TX	66.
	TX	137.
	TX	121.6
	UT	2000.
	UT	229.
	UT	16.
	UT	229.
	UT	381.
	VA	600.
	VA	9.
	VA	1298.9
	VA	837.
	VA	23.
	VA	278.
	VA	398.
	VA	50.
	VA	2120.
	VA	452.
	WA	101.4
	WA	166.
	WA	1900.
	WI	170.
	WI	93.
	WI	152.89
	WV	
	WV	38.9
	WV	77.3
	WY	23.
	WY	262.7
	WY	12.8
	WY	32.

TEXAS SUBPOENAS

To: Sharon Howard@LEGAL@RTCDAL
 Bradley M. Smolkin@LEGAL@RTCATL
 Julie F. Yanda@LEGAL@RTCKC
 Bruce Pederson@Legal@RTCDEN
 *@legal-pls@RTCDC
 Bcc:
 From: @Legal-pls@RTCDC
 Subject: Financial subpoenas
 Date: Friday, May 1, 1992 8:26:06 CDT
 Attach:
 Certify: N
 Forwarded by: Sharon Howard@LEGAL@RTCDAL

I've become a true believer in sending D&O target= subpoenas for financial information (as well as other things). In my case, we had paid some \$20,000 for a D&O asset search that turned up \$8 million in assets. I saw it as a marginal case. In March, I sent out fairly simple financial subpoenas for tax returns, financials, and other asset information. While not everyone has responded, so far, this subpoena has turned up well over \$100 million in assets. Suddenly, the case looks big.

I suggest that you try it, if you haven't already.

To: Susan Tibolla@Legal-pls@RTCDC
 Cc: Sharon Howard@LEGAL@RTCDAL
 Suzanne Rigby@Legal-pls@RTCDC
 B
 From: Thomas Burnside@LEGAL@RTCDAL
 Subject: re: NO. OF SUBPOENAS ISSUED IN 1991
 Date: Thursday, January 30, 1992 12:43:21 CST
 Attach:
 Certify: N
 Forwarded by:

Our records show the following Orders of Investigations and subpoenas were issued in 1991:

	Orders of Investigation	Subpoenas
SWRO	11	180
MCO	5	41
GCCO	13	3
SCO	27	13
Total	56	237

Our CFO's will double-check to make sure that we are not missing any Orders or Subpoenas.

To: Susan Tibolla@Legal-pls@RTCDC
 Cc: Sharon Howard@LEGAL@RTCDAL
 Suzanne Rigby@Legal-pls@RTCDC
 From: Thomas Burnside@LEGAL@RTCDAL
 Subject: Thursday, January 30, 1992 13:25:54 CST
 Attach:
 Certify: N
 Forwarded by:

We received confirmation on the MCO figures for Orders of Investigations and Subpoenas. SWRO is also correct. SCO has 20 (not 13) subpoenas. GCCO has also confirmed our figures. The new total for subpoenas is 244 (not 237)

To: Susan Tibolla@Legal-pls@RTCDC
 Cc: Sharon Howard@LEGAL@RTCDAL
 Suzanne Rigby@Legal-pls@RTCDC
 From: Thomas Burnside@LEGAL@RTCDAL
 Subject: re: NO. OF SUBPOENAS ISSUED IN 1991
 Date: Thursday, January 30, 1992 12:43:21 CST
 Attach:
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MCO	5	41
GCCO	12 19 ✓	3
SCO	27	13
Total	56 ✓	237

Our CFO's will double-check to make sure that we are not missing any Orders or Subpoenas.



Resolution Trust Corporation

Metroplex Consolidated Office

PLS

M E M O

TO: Rex Taylor
Section Chief
PLS - Dallas

FROM: Olga Villela
Paralegal Specialist
PLS - Dallas

DATE: June 23, 1992

Re: Senate Request for No. of Subpoenas Issued by PLS in 1992

DALLAS

(MCO)

(SWRO)

Jan. (1)	Jan (1)
Feb. (8)	Feb. (0)
Mar. (0)	Mar. (0)
Apr. (0)	Apr. (1)
May (2)	May (0)
June (2) (as of June 19)	June (18) (as of June 19)

SAN ANTONIOBATON ROUGE

Jan. (16)	Jan. (71)
Feb. (12)	Feb. (35)
Mar. (8)	Mar. (0)
Apr. (38)	Apr. (58)
May (9)	May (50)
June (1) (as of June 19)	June 1)

To: Kimberly M. Thorne@Legal-pls@RTCDC
 Cc: Rex Taylor@LEG2@RTCDALMET
 Bcc:
 From: Olga Villela@LEG2@RTCDALMET
 Subject: re: Monthly Subpoena Count
 Date: Monday, July 20, 1992 11:18:16 CDT
 Attach:
 Certify: Y
 Forwarded by:

 Following is the information you requested:

(Dallas Regional and MCO offices are now combined; however, I listed the subpoenas separately. If you want to combine them, please do so.)

DALLAS

	(MCO)	(SWRO)	(SAN ANTONIO)	(BATON ROUGE)	(HOUSTON)
Jan.	(1)	(1)	(16)	(71)	(0)
Feb.	(8)	(0)	(12)	(35)	(0)
Mar.	(0)	(0)	(8)	(0)	(0)
Apr.	(0)	(1)	(38)	(58)	(0)
May	(2)	(0)	(9)	(50)	(0)
June	(2)	(18)	(6)	(3)	(0)

SUBPOENA LOG

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
PLANO SAVINGS	T. B. ^{General} CARTER		AS-001-R	7/15/91	7/31/91
"	"		AS-002-R	"	"
"	"		AS-003-R	"	"
"	"		AS-004-R	"	"
"	"		AS-005-R	"	"
"	"		AS-006-R	"	"
"	"		AS-007-R	"	"
"	"		AS-008-R	"	"
"	"		AS-009-R	"	"
"	"		AS-010-R	"	"
"	"		AS-011-R	"	"
"	"		AS-012-R	"	"

-R = Regional Office

-D = Dallas CFO

-H = Houston CFO

-S = San Antonio CFO

SUBPOENA 1001

institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
AND SAVINGS	TPB (Good)	CARLIS	AS-013-R	7/15/91	7/31/91
ISRA SAVINGS	TPB (WEST)	ADAMS	AS-014-R	7/17/91	8/23/91
"	"	"	AS-015-R	"	"
"	"	"	AS-016-R	"	"
"	"	"	AS-017-R	"	"
"	"	"	AS-018-R	"	"
"	"	"	AS-019-R	"	"
"	"	"	AS-020-R	"	"
"	"	"	AS-021-R	"	"
"	"	"	AS-022-R	"	"
"	"	"	AS-023-R	"	"
"	"	"	AS-024-R	"	"

- Regional Office

-D - Dallas CFO

-H - Houston CFO

-S - San Antonio CFO

SUBPOENA LOG

Institution	PLA Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
VICTORIA SAVINGS	TPB (West, Adams)		AS-025-R	7/17/91	8/23/91
Bear Savings And	TPB (Hixson, Westmore)		AS-026-R	7/18/91	W/in 5 days or RETURN OF SUBPOENA
"	"		AS-027-R	"	"
"	"		AS-028-R	"	"
"	"		AS-029-R	"	"
"	"		AS-030-R	"	"
"	"		AS-031-R	"	"
"	"		AS-032-R	"	"
"	"		AS-033-R	"	"
"	"		AS-034-R	"	"
VICTORIA SAVINGS	TPB (West, Adams)		AS-036-R	8/19/91	8/23/91
Bear Savings	TPB (Hixson, Westmore)		AS-035-R	7/18/91	W/in 5 days OF RECEIPT

-R = Regional Office -D = Dallas CPO -H = Houston CPO -S = San Antonio CPO

SUBPOENA LOG

Institution	PLS Attorney (R. JUSTICE - PLS)	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
Banc Plus (INC)	AB		AS-D37-R	8/9/91	8/26/91
Banc Plus	(PETER MARTIN)		AS-D38-R	8/10/91	8/29/91
"	"		AS-D41-R	8/19/91	9/6/91
"	"		AS-D42-R	"	"
"	"		AS-D43-R	"	"
"	"		AS-D44-R	8/19/91	9/6/91
"	"		AS-D45-R	"	9/6/91
"	"		AS-D46-R	"	"
"	"		AS-D47-R	"	"
"	"		AS-D48-R	"	"
"	"		AS-D49-R	"	"
"	"		AS-D50-R	"	"

-R = Regional Office -D = Dallas CPO -H = Houston CPO -S = San Antonio CPO

SUBPOENA FOR

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
Bear Plus	TPB		AS-051-R	8/19/91	9/6/91
Bear Plus	TPB		AS-039-R	8/17/91	8/22/91
Bear Savings	GREENWALD		AS-040-B	8/15/91	8/15/91
Bear Savings	GREENWALD		AS-052-R	8/19/91	10 days after receipt
"	"		AS-053-R	"	"
"	"		AS-054-R	"	"
"	"		AS-055-R	"	"
"	"		AS-056-R	"	"
"	"		AS-057-R	"	"
"	"		AS-058-R	"	"
"	"		AS-059-R	"	"
"	"		AS-060-R	"	"

-R = Regional Office -D = Dallas CPO -H = Houston CPO -S = San Antonio CPO

SUBPOENA LOG

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
BEAR SAVINGS	MARSH & WESTHEIMER		AS-061-R	8/19/91	10 DAYS AFTER RECEIPT
"	"	"	AS-062-R	"	"
"	"	"	AS-063-R	"	"
CITIZENS S.A.	POPHAM, HALL & CO. TJB/SQH		AS-064-R	8/22/91	9/5/91
METROBANK	POPHAM, HALL & CO. TJB/SQH		AS-065-R	8/22/91	9/5/91
WESTERN GUAR S & L	ALONGA CRESSMAN HAWKINS		AS-066-H	8/13/91	8/25/91
MERCANTILE	RAO, BURNS HAWKINS		AS-067-H	8/13/91	8/25/91
"	"	"	AS-068-H	"	"
BANK PLUS	MEDINA & ASSOC. BURNSIDE		AS-069-R	9/19/91	10/8/91
"	"	"	AS-070-R	"	"
"	"	"	AS-071-R	"	"
"	"	"	AS-072-R	"	"

-R = Regional Office

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APPENDIX 100

Institution	PLS Attorney MEDNAT ASSE. BANKRUPT	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
"	"	"	AS-073-R	9/19/91	10/8/91
"	"	"	AS-074-R	"	"
"	"	"	AS-075-R	"	"
"	"	"	AS-076-R	"	"
"	"	"	AS-077-R	"	"
"	"	"	AS-078-R	"	"
"	"	"	AS-079-R	"	"
"	"	"	AS-080-R	"	"
"	"	"	AS-081-R	"	"
"	"	"	AS-082-R	"	"
"	"	"	AS-083-R	"	"
"	"	"	AS-084-R	"	"

-R - Regional Office

-D - Dallas CFO

-H - Houston CFO

-S - San Antonio CFO

SUBPOENA LOG

Institution	FLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
Bone Plus (M.D.C. waiv.)	MEDINA & ASSOC. BURNSIDE		AS-085-R	9/18/91	10/8/91
Bone Plus (M.D.C. waiv.)	RUBINSTEIN & PCL BURNSIDE		08P-1 AS-086-R	9/20/91	10/11/91
Bone Plus (M.D.C. waiv.)	R & P BURNSIDE		AS-087-R	9/27/91	10/9/91
Bone Plus	PEPER, MARTIN BURNSIDE		AS-088-R	9/27/91	10/15/91
"	"		AS-089-R	"	"
"	"		AS-090-R	"	"
"	"		AS-091-R	"	"
"	"		AS-092-R	"	"
"	"		AS-093-R	"	"
"	"		AS-094-R	"	"
"	"		AS-095-R	"	"
"	"		AS-096-R	"	"

-R = Regional Office

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SUBPOENA LOG

Institution	PLS Attorney Peper, Martin/ Burnside	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
BancPlus	Burnside		AS-097-R	9/27/91	10/5/91
"	"		AS-098-R	"	"
Bank Savings	Goodman, Carlton Burnside		AS-099-R	10/3/91	10/31/91
"	"		AS-100-R	"	"
"	"		AS-101-R	"	"
BancPlus	Peper, Martin Burnside		AS-102-R	10/9/91	10/11/91
BancPlus	Peper, Martin Burnside		AS-103-R	10/22/91	11/2/91
"	Peper, Martin Burnside		AS-104-R	11/1/91	11/11/91
Victor SA	West, Adams Greenwald		AS-105-S	10/15/91	11/1/91
"	"		AS-106-S	"	"
BancPlus	Medina & Assoc. Burnside		AS-107-R	11/6/91	11/9/91
BancPlus	Medina & Assoc. Burnside		AS-108-R	11/6/91	11/18/91

-S = San Antonio CPO

-H = Houston CPO

-D = Dallas CPO

-R = Regional Office

SUBPOENA 100

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
BEXAR	WIESCH & WESTHEIMER BURNSIDE		AS-109-R	10/25/91	10 DAYS AFTER RECEIPT
BANK PLUS	MEDINA & ASSOC. BURNSIDE		AS-110-R	11/12/91	11/27/91
"	MEDINA & ASSOC. BURNSIDE		AS-111-R	11/12/91	11/27/91
MC FARMER BANK - 7401 FINKELSTEIN, THOMPSON TRIPPO SA - 6949 EMERSON SA - 7210 HOWARD W SN SA - 7413 PETERSON FINANCIAL - 7206 LEONARD BANK SA - 6816 S & L PSN SA - 7067 PETERSON SA - 7129 PETERSON SECURITIES - 7133 PETERSON SECURITIES BANK - 7403 APPROX SA - 7185 VICTORIA SA - 7100 AUSTIN SA - 7136 TRAVIS SA (7134)			AS-112-R	11/27/91	12/14/91
BANK PLUS	PEPER, MARTIN BURNSIDE		AS-113-R	11/14/91	12/2/91
"	PEPER, MARTIN BURNSIDE		AS-114-R	11/14/91	12/2/91
BANK PLUS	BURNSIDE, PERRY BURNSIDE		AS-115-R	11/19/91	
BANK PLUS	PEPER, MARTIN BURNSIDE		AS-116-R	11/27/91	12/14/91

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SUBPOENA LOG

Institution	PLA Attorney Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
BONE PLUS	PETER, MARTIN BURNSIDE	AS-117-R	11/27/91	12/16/91
"	"	AS-118-R	11/27/91	12/16/91
VICTORIA S.A.	WEST, ADAMS GREENWALD	AS-119-S	12/5/91	12/14/91
THE TEN THOUSAND DOLLAR FINANCIAL INSTITUTION BOSTON S.A. - 6945 CENTRAL S.A. - 7210 PORTLAND S.A. - 7413 FORTUNE FINANCIAL - 7206 MAGNIFICENT S.A. - 6966 FARM S.A. - 7067 SUNSHINE S.A. - 7325 AMERICAN S.A. - 7273 CRISTO S.A. - 7403 CAPRICORN S.A. - 7185 VICTORIA S.A. - 7210 ALPHA S.A. - 7336 TERRA S.A. - 7334 CANTON S.A. - 6938	HOWARD	INC AS-120-R	12/9/91	1/6/92
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
BONE PLUS	MEDINA, ASHC BURNSIDE	AS-121-R	12/10/91	12/31/91
"	"	AS-122-R	"	"
"	"	AS-123-R	"	"
"	"	AS-124-R	"	"

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SUBPOENA LOG

Institution	PLS Attorney McDermott & Assoc.	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
Banc Plus	BURNSIDE		AS-125-R	12/10/91	12/31/91
"	"		AS-126-R	"	"
"	"		AS-127-R	"	"
"	"		AS-128-R	"	"
"	"		AS-129-R	"	"
"	"		AS-130-R	"	"
Banc Plus	PEPER MARTIN BURNSIDE/HOWARD		AS-131-R	12/11/91	12/31/91
Banc Plus	MEDINA ASSOC. BURNSIDE/HOWARD		AS-132-R	12/12/91	12/31/91
"	"		AS-133-R	"	"
CITY SAVINGS SA	WEST, ADAMS BURNSIDE		AS-134-R	12/16/91	1/4/92
"	"		AS-135-R	12/16/91	1/4/92
Banc Plus	PEPER MARTIN BURNSIDE		AS-136-R	12/15/91	1/6/92

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SUBPOENA LOG

Institution	File Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
BONEPLUS	PROOF, MARTIN	BURNSIDE	AS-137-R	12/5/91	1/6/92
"	"	"	AS-138-R	"	"
"	"	"	AS-139-R	"	"
CITIZENS	FINCHAM, THOMPSON	BURNSIDE	AS-140-R	12/20/91	1/10/92
"	"	"	AS-141-R	"	"
BEXAR	HASCH, WASSERMEYER	BURNSIDE	AS-142-R	12/13/91	12/23/91
"	"	"	AS-143-R	"	"
"	"	"	AS-144-R	"	"
BONEPLUS	PROOF, MARTIN	BURNSIDE	AS-145-R	12/6/91	12/31/91
"	"	"	AS-146-R	"	"
"	"	"	AS-147-R	"	"
"	"	"	AS-148-R	"	"

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SUBPOENA LOG

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
BONEPLUS	PEPER, MARTIN	"	AS-149-R	12/3/91	12/31/91
"	"	"	AS-150-R	"	"
"	"	"	AS-151-R	"	"
"	"	"	AS-152-R	"	"
"	"	"	AS-153-R	"	"
"	"	"	AS-154-R	"	"
"	"	"	AS-155-R	"	"
"	"	"	AS-156-R	"	"
"	"	"	AS-157-R	"	"
"	"	"	AS-158-R	"	"
"	"	"	AS-159-R	"	"
"	"	"	AS-160-R	"	"

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SUBPOENA LOG

Institution	File Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
BonePLUS	PERCE MARIN	BURNSIDE	AS-161-R	12/5/91	12/31/91
"	"	"	AS-162-R	"	"
"	"	"	AS-163-R	"	"
"	"	"	AS-164-R	"	"
"	"	"	AS-165-R	"	"
"	"	"	AS-166-R	"	"
"	"	"	AS-167-R	"	"
"	"	"	AS-168-R	"	"
"	"	"	AS-169-R	"	"
"	"	"	AS-170-R	"	"
"	"	"	AS-171-R	"	"
"	"	"	AS-172-R	12/4/91	12/10/91

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SUBPOENA LOG

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
BANK PLUS	PEPER, MARIN		AS-173-R	12/9/91	12/31/91
CM SAVINGS	BURNSIDE FIRELUSTEN, THOMPSON		AS-174-R	1/7/92	1/28/92
"	"		AS-175-R	"	"
"	"		AS-176-R	"	"
"	"		AS-177-R	"	"
"	"		AS-178-R	"	"
HAWKERSA	GOMEZ		AS-179-D	9/28/90	10/15/90
"	"		AS-180-D	"	"
"	"		AS-181-D	"	"
"	"		AS-182-D	"	"
"	"		AS-183-D	"	"
"	"		AS-184-D	"	"

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EXHIBIT 100

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
HAMMACK S.A.	GONZALEZ		AS-185-D	10/10/90	10/25/90
"	"		AS-186-D	11/1/90	11/16/90
"	"		AS-187-D	1/18/91	2/8/91
"	"		AS-188-D	"	"
"	"		AS-189-D	3/21/91	4/5/91
"	"		AS-190-D	"	"
"	"		AS-191-D	4/4/91	4/19/91
"	"		AS-192-D	4/19/91	5/16/91
"	"		AS-193-D	7/10/91	8/12/91
"	"		AS-194-D	"	"
"	"		AS-195-D	"	"
"	"		AS-196-D	"	"

-R - Regional Office

-D - Dallas CTO

-H - Houston CTO

-S - San Antonio CTO

SUBPOENA LOG

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
HALLMARK S.A.	GONZALEZ		AS-197-D	7/10/91	8/12/91
"	"		AS-198-D	7/12/91	7/29/91
"	"		AS-199-D	"	"
"	"		AS-200-D	"	"
GENL S.A.	ROGERS	HOLLAND & HART	AS-201-D	10/15/91	10/31/91
"	"		AS-202-D	10/31/91	11/8/91
PLANO SAUNDERS	ROGERS	GODWIN, CARLTON	AS-203-D	10/31/91	11/8/91
BEDFORD S.A.	ROGERS	HOLLAND & HART	AS-204-D	11/1/91	11/15/91
"	"		AS-205-D	"	"
"	"		AS-206-D	"	"
"	"		AS-207-D	11/14/91	11/27/91
"	"		AS-208-D	"	"

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SUBPOENA LOG

Institution	PLS Attorney HOLLAND & HART	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
BEDFORD S.A.	ROGERS		AS-209-D	12/2/91	12/20/91
"	"		AS-210-D	12/3/91	12/13/91
PANOS & LASSIN	ROGERS		AS-211-D	12/6/91	12/30/91
"	"		AS-212-D	"	12/31/91
"	"		AS-213-D	12/10/91	12/30/91
"	"		AS-214-D	"	"
"	"		AS-215-D	"	"
"	"		AS-216-D	"	"
"	"		AS-217-D	"	"
"	"		AS-218-D	"	"
"	"		AS-219-D	"	"
PIFFENBERG & L of SAN ANTONIO	ROHAM, HAIK GREENWALD		AS-220-S	1/5/92	1/24/92

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SUBPOENA LOG

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
BancPLUS	Buonsic		AS-221-R	1/16/92	1/22/92
First Federal SA	M. Arcanwald		AS-222-S	1/15/92	1/24/92
Alamo Federal SA	T. Reynolds		AS-223-S	1/21/92	1/28/92
Alamo Federal SA	J. Reynolds		AS-224-S	1/21/92	1/30/92
Alamo Federal SA	J. Reynolds		AS-225-S	1/21/92	1/27/92
Alamo Federal SA	J. Reynolds		AS-226-S	1/21/92	1/29/92
Alamo Federal SA	J. Reynolds		AS-227-S	1/21/92	1/27/92
Alamo Federal SA	J. Reynolds		AS-228-S	1/21/92	1/30/92
Alamo Federal SA	J. Reynolds		AS-229-S	1/21/92	1/27/92
Southside Fed SA	M. Sevil		AS-230-S	1/21/92	2/1/92
Southwestern Fed SA	M. Sevil		AS-231-S	2/3/92	2/10/92
Valley Fed SA	M. Sevil		AS-232-S	2/3/92	2/10/92

-S - San Antonio CPO

-H - Houston CPO

-D - Dallas CPO

-R - Regional Office

SUBPOENA LOG

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
<u>Alameda Fed SD</u>	<u>J. Reynolds</u>		<u>AS-235-S</u>	<u>1/29/92</u>	<u>1/29/92</u>
<u>Front Street Fed SD</u>	<u>M. Schill</u>		<u>AS-236-S</u>	<u>1/29/92</u>	<u>2/10/92</u>
<u>Capitol Fed SD</u>	<u>M. Greenwald</u>		<u>AS-235-S</u>	<u>1/28/92</u>	<u>2/10/92</u>
<u>Capitol City Fed SD</u>	<u>M. Greenwald</u>		<u>AS-236-S</u>	<u>1/28/92</u>	<u>2/10/92</u>
<u>Certified Fed SD</u>	<u>M. Greenwald</u>		<u>AS-237-S</u>	<u>1/29/92</u>	<u>2/10/92</u>
<u>Alameda Fed SD</u>	<u>J. Reynolds</u>		<u>AS-238-S</u>	<u>1/28/92</u>	<u>2/10/92</u>
<u>Denton Savings</u>	<u>Rob Rogers</u>		<u>AS-239-D</u>	<u>2/5/92</u>	<u>2/21/92</u>
<u>Southside Fed SD</u>	<u>M. Schill</u>		<u>AS-240-S</u>	<u>2/5/92</u>	<u>2/10/92</u>
<u>Certified Fed SD</u>	<u>M. Greenwald</u>		<u>AS-241-S</u>	<u>2/2/92</u>	<u>2/10/92</u>
<u>Vision Bank SD</u>	<u>M. Greenwald</u>		<u>AS-242-S</u>	<u>2/10/92</u>	<u>2/10/92</u>
<u>Vision Bank SD</u>	<u>M. Greenwald</u>		<u>AS-243-S</u>	<u>2/10/92</u>	<u>2/10/92</u>
<u>Capitol City Fed</u>	<u>M. Greenwald</u>		<u>AS-244-S</u>	<u>2/24/92</u>	<u>3/6/92</u>

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SUBPOENA LOG

Institution	PLS Attorney FINGERSTEN THOMPSON	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
JERRY SAWYERS	SCHULZ		AS-257-S	4/2/92	4/14/92
ALLER FEDERAL	SCHULZ		AS-258-S	4/1/92	4/23/92
"	"		AS-259-S	"	"
"	"		AS-260-S	"	"
"	"		AS-261-S	"	"
"	"		AS-262-S	"	"
VICTORIA	WEST ADAMS GREENWALD		AS-263-S	4/7/92	5/1/92
"	"		AS-264-S	"	"
"	"		AS-265-S	"	"
"	"		AS-266-S	"	"
"	"		AS-267-S	"	"
"	"		AS-268-S	4/8/92	"

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SUBPOENA LOG

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
<u>VICTORIA</u>	<u>WEST, ADAMS</u>	<u>GREENWALD</u>	<u>AS-269-S</u>	<u>4/7/92</u>	<u>5/1/92</u>
"	"	"	<u>AS-270-S</u>	<u>4/7/92</u>	"
"	"	"	<u>AS-271-S</u>	<u>4/8/92</u>	"
"	"	"	<u>AS-272-S</u>	<u>4/7/92</u>	"
<u>SOUTHERSAIN SCHOOL</u>			<u>AS-273-S</u>	<u>4/4/92</u>	<u>5/5/92</u>
"	"	"	<u>AS-274-S</u>	"	"
"	"	"	<u>AS-275-S</u>	"	<u>5/6/92</u>
"	"	"	<u>AS-276-S</u>	"	"
"	"	"	<u>AS-277-S</u>	"	<u>5/7/92</u>
"	"	"	<u>AS-278-S</u>	"	"
"	"	"	<u>AS-279-S</u>	"	<u>5/8/92</u>
"	"	"	<u>AS-280-S</u>	"	"

-R - Regional Office -D - Dallas CPO -H - Houston CPO -S - San Antonio CPO

Institution	FLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
SURETY F.B.I.	SCHILL		AS-281-S	4/4/92	5/12/92
"	"		AS-282-S	"	"
"	"		AS-283-S	"	5/13/92
"	"		AS-284-S	"	"
SOUTHWESTERN F.S.A. SCHILL			AS-285-S	4/12/92	5/28/92
"	"		AS-286-S	"	"
"	"		AS-287-S	"	6/3/92
"	"		AS-288-S	"	5/29/92
"	"		AS-289-S	"	"
"	"		AS-290-S	"	6/2/92
TERREBONNE S. LA. CLARK		L u	AS-291-B	5/1/92	5/11/92
PARISH F.S.B. CLARK		L u	AS-292-B	5/1/92	5/5/92

-R = Regional Office -D = Dallas CPO -H = Houston CPO -S = San Antonio CPO
 B = BATON ROUGE CPO

SUBPOENA LOG

SUBPOENA LOG

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
PARISHES, B	CLARK	Lk	AS-293-B	4/29/92	5/11/92
"	"	Lk	AS-294-B	"	"
TERREBONNE	SALLA CLARK	Lk	AS-295-B	4/29/92	5/7/92
"	"	Lk	AS-296-B	"	5/10/92
SURETY FSA	REYNOLDS		AS-297-B	4/30/92	5/26/92
"	"		AS-298-S	"	5/29/92
"	"		AS-299-S	"	"
"	"		AS-300-S	"	5/26/92
VARETEO	SCHULZ		AS-301-S	3/27/92	4/21/92
"	"		AS-302-S	"	4/29/92
"	"		AS-303-S	"	4/22/92
"	"		AS-304-S	"	4/21/92

-R = Regional Office

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-S = San Antonio CPO

SUBPOENA FOR

Institution	PLA Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
Valley Fed	Schling		AS-305-S	3/27/92	4/22/92
"	"		AS-306-S	"	"
"	"		AS-307-S	"	4/23/92
"	"		AS-308-S	"	"
VICTORIA GREENWARD			AS-309-S	11/5/91	11/15/91
CERTIFIED	"		AS-310-S	1/29/92	2/11/92
VISION BANK	"		AS-311-S	2/10/92	2/14/92
SOUTHWESTERN REYNOLDS			AS-312-S	5/1/92	5/29/92
TERREBONNE CLARK		L ^a	AS-313-B	5/5/92	5/8/92
"	"	L ^a	AS-314-B	5/5/92	5/12/92
"	"	L ^a	AS-315-B	"	"
"	"	L ^a	AS-316-B	"	"

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(NLO)

SUBPOENA LOG

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
Quonba Homestead	RUBICHEAUX	L ^u	AS-317-B	5/6/92	5/20/92
"	"	L ^u	AS-318-B	"	"
"	"	L ^u	AS-319-B	"	"
"	"	L ^u	AS-320-B	"	"
SOUTHWESTERN	REYNOLDS		AS-321-S	4/27/92 (5/6)	5/28/92
"	"		AS-322-S	"	6/4/92
"	"		AS-323-S	"	5/28/92
"	"		AS-324-S	"	5/28/92
ARIZONA FSB	CLARK	L ^u	AS-325-B	5/7/92	5/8/92
TERREBONNE	CLARK	L ^u	AS-326-B	5/7/92	5/15/92
"	"	L ^u	AS-327-B	"	"
"	"	L ^u	AS-328-B	"	"

-R = Regional Office

-D = Dallas CPO

-H = Houston CPO

-S = San Antonio CPO

EUREKA LOG

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
<u>TERREBONE</u>	<u>CLARK</u>	<u>LA</u>	<u>AS-329-B</u>	<u>5/7/92</u>	<u>5/15/92</u>
<u>AMERICAN SEL</u>	<u>ROBENEAUX</u>	<u>LA</u>	<u>AS-330-B</u>	<u>5/7/92</u>	<u>5/15/92</u>
<u>"</u>	<u>"</u>	<u>LA</u>	<u>AS-331-B</u>	<u>"</u>	<u>"</u>
<u>"</u>	<u>"</u>	<u>LA</u>	<u>AS-332-B</u>	<u>"</u>	<u>"</u>
<u>"</u>	<u>"</u>	<u>LA</u>	<u>AS-333-B</u>	<u>"</u>	<u>"</u>
<u>"</u>	<u>"</u>	<u>LA</u>	<u>AS-334-B</u>	<u>"</u>	<u>"</u>
<u>"</u>	<u>"</u>	<u>LA</u>	<u>AS-335-B</u>	<u>"</u>	<u>"</u>
<u>"</u>	<u>"</u>	<u>LA</u>	<u>AS-336-B</u>	<u>"</u>	<u>"</u>
<u>MERIDIAN</u>	<u>GONZALES</u>		<u>AS-337-D</u>	<u>5/7/92</u>	<u>5/12/92</u>
<u>"</u>	<u>"</u>		<u>AS-338-D</u>	<u>"</u>	<u>"</u>
<u>SOUTHWESTERN</u>	<u>REYNOLDS</u>		<u>AS-339-S</u>	<u>5/1/92</u>	<u>5/27/92</u>
<u>"</u>	<u>"</u>		<u>AS-340-S</u>	<u>"</u>	<u>"</u>

-R = Regional Office -D = Dallas CPO -H = Houston CPO -S = San Antonio CPO

SUBPOENA FOR

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
<u>San Antonio</u>	<u>Reynolds</u>		<u>AS-341-S</u>	<u>5/1/92</u>	<u>5/29/92</u>
<u>Columbia</u>	<u>ROBINSON</u>	<u>L"</u>	<u>AS-342-B</u>	<u>5/2/92</u>	<u>5/20/92</u>
<u>Columbia</u>	<u>ROBINSON</u>	<u>L"</u>	<u>AS-343-B</u>	<u>5/22/92</u>	<u>6/5/92</u>
<u>"</u>	<u>"</u>	<u>L"</u>	<u>AS-344-B</u>	<u>"</u>	<u>"</u>
<u>"</u>	<u>"</u>	<u>L"</u>	<u>AS-345-B</u>	<u>"</u>	<u>"</u>
<u>South Side</u>	<u>LOHMEYER</u>	<u>L"</u>	<u>AS-346-B</u>	<u>5/20/92</u>	<u>5/27/92</u>
<u>South Side</u>	<u>LOHMEYER</u>	<u>L"</u>	<u>AS-347-B</u>	<u>5/27/92</u>	<u>6/9/92</u>
<u>"</u>	<u>"</u>	<u>L"</u>	<u>AS-348-B</u>	<u>"</u>	<u>"</u>
<u>"</u>	<u>"</u>	<u>L"</u>	<u>AS-349-B</u>	<u>"</u>	<u>"</u>
<u>"</u>	<u>"</u>	<u>L"</u>	<u>AS-350-B</u>	<u>"</u>	<u>"</u>
<u>"</u>	<u>"</u>	<u>L"</u>	<u>AS-351-B</u>	<u>"</u>	<u>"</u>
<u>"</u>	<u>"</u>	<u>L"</u>	<u>AS-352-B</u>	<u>"</u>	<u>"</u>

-R = Regional Office

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-H = Houston CPO

-S = San Antonio CPO

TUDOR CITY

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
Seaboard	LIGHTFOOT	L.A.	AS-353-B	5/27/42	6/8/42
"	"	L.A.	AS-354-B	"	"
"	"	L.A.	AS-355-B	"	"
"	"	L.A.	AS-356-B	"	"
"	"	L.A.	AS-357-B	"	"
"	"	L.A.	AS-358-B	"	"
"	"	L.A.	AS-359-B	"	"
"	"	L.A.	AS-360-B	"	"
"	"	L.A.	AS-361-B	"	"
"	"	L.A.	AS-362-B	"	"
"	"	L.A.	AS-363-B	"	"
"	"	L.A.	AS-364-B	"	"

-R = Regional Office -D = Dallas CPO -H = Houston CPO -S = San Antonio CPO

SUBPOENA LOG

Institution	Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
SOUTH S&L	LIGHTFOOT	L _w	AS-365-B	5/27/92	6/8/92
"	"	L _a	AS-366-B	"	"
TEXAS BONE	BURNSIDE		AS-367-R	6/9/92	6/24/92
"	"		AS-368-R	"	7/3/92
"	"		AS-369-R	"	7/2/92
"	"		AS-370-R	"	7/1/92
"	"		AS-371-R	"	"
"	"		AS-372-R	"	6/26/92
"	"		AS-373-R	"	"
"	"		AS-374-R	"	7/3/92
"	"		AS-375-R	"	6/25/92
"	"		AS-376-R	"	"

-R = Regional Office -D = Dallas CPO -H = Houston CPO -S = San Antonio CPO

SUBPOENA 100

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
Wingard Sav. Bank	John L. Greenwald		S = 059	05/07/92	05/12/92
"	"	"	S = 060	05/07/92	05/12/92
Centrico Fed. Sav. Assn.	Mark J. Greenwald		S = 061	06/12/92	06/15/92
California BA Sav. Assoc.	"	"	S = 062	06/25/92	07/09/92
California Fed. Sav. Assoc.	"	"	S = 063	06/25/92	07/06/92
"	"	"	S = 064	06/25/92	07/06/92
"	"	"	S = 065	06/25/92	07/07/92
American Seafarers	Carl W. Reinbreck	L ^a	B = 066	07/01/92	07/15/92
"	"	L ^a	B = 067	07/15/92	07/15/92
Wingard Bank for Savings, F. A.	Barry Lightfoot	L ^a	B = 068	07/02/92	07/09/92
Wingard Sav. Bank	Christopher	L ^a	W = 069	07/02/92	07/17/92
Wingard Sav. Bank	"	L ^a	W = 070	07/02/92	07/16/92
Wingard Sav. Bank	"	L ^a	W = 071	07/02/92	07/16/92
Wingard Sav. Bank	"	L ^a	S = SAN ANTONIO	M = HOUSTON	07/16/92

... DALLAS OFFICE
B - BAYON ROUGE

SUPERSEDA LOG

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
Shawnee Soc. Bank	Cowley Perry	La	W = 072	07/02/92	07/20/92
Texaco Bank Soc. FSB	Tom Penaville		D = 073	07/07/92	07/30/92
Texaco Bank Soc. FSB	" "		D = 074	07/07/92	07/30/92
Texaco Bank Soc. FSB	" "		D = 075	07/07/92	07/30/92
South Savings & Loan (Shiloh) Hightfoot	Don W.	La	B = 076	07/08/92	07/17/92
" "	" "	La	B = 077	07/08/92	07/17/92
Texaco Bank Soc. FSB	Tom Penaville		D = 078	07/08/92	07/31/92
Texaco Bank Soc. FSB	" "		D = 079	07/08/92	07/28/92
Wichita Bank for Sav. Fd. Hightfoot	Don W.	La	B = 080	07/14/92	07/27/92
American Sav. Assoc. Hightfoot	Don W.	La	B = 081	07/21/92	08/04/92
American Sav. Assoc. "	" "	La	B = 082	07/21/92	08/04/92
" "	" "	La	B = 083	07/21/92	08/04/92

D = DALLAS OFFICE B = BATON ROUGE

S = SAN ANTONIO M = HOUSTON

SUBPOENA LOG

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
Texas Inst. Sec., FSA	Tom Burnside		D-084	08/27/92	09/01/92
Texas Inst. Sec., FSA	Tom Burnside		D-085	09/11/92	09/21/92
THE BANKERS BANK, A SIC ADVISOR	BOB ROGERS		D-086	09/18/92	10/09/92
TRILIFE FINANCIAL SEC	Tom Burnside		D-087	09/11/92	09/15/92
Woolly Saw. BROOK	BOB ROGERS		D-088	09/24/92	10/16/92
THE BANKERS BANK A SIC ADVISOR	BOB ROGERS		D-089	10/06/92	10/30/92
Texas Bank Sec. Exch.	Tom Burnside		D-090	10/24/92	11/13/92
Texas Bank Sec. Exch.	"		D-091	10/24/92	11/13/92
Bankers Bank Sec. Exch.	BOB ROGERS		D-092	11/2/92	11/20/92
Green Bank Sec. Exch.	Thomas Burnside		D-093	11/13/92	12/4/92
"	"		D-094	11/13/92	12/4/92
"	"		D-095	11/13/92	12/4/92

D - DALLAS OFFICE B - BATON ROUGE S - SAN ANTONIO H - HOUSTON

SUBPOENA 100

Institution	PLS Attorney	Name of Witness	Subpoena Number	Date Issued	Date to Comply/ Deadline
Guantanamo Bay, Cuba	Thorne Adams	L. A.	D-096	11/13/92	12/4/92
"	" "	L. A.	D-097	" "	" "
"	" "	L. A.	D-098	" "	" "
"	" "	L. A.	D-099	" "	" "
"	" "	L. A.	D-100	" "	" "
"	" "	L. A.	D-101	" "	" "
"	" "	L. A.	D-102	" "	" "
"	" "	L. A.	D-103	11/24/92	12/14/92
"	" "	L. A.	D-104	11/24/92	12/14/92
"	" "	L. A.	D-105	11/24/92	" "
Texarkana, Tex. Fed.	" "	Wm	D-106	11/24/92	12/15/92
" "	" "	Wm	D-107	11/24/92	12/15/92

S - SAN ANTONIO H - HOUSTON

D - DALLAS OFFICE E - BATON ROUGE

- First, with one apparent exception, very few of the RTC investigators in the field offices which have been or are going to be closed seem willing to transfer to regional RTC offices; Instead the regional offices have apparently had to hire new, mostly relatively inexperienced investigators who may need 6 to 12 months to familiarize themselves with the investigative files in hundreds of failed S&L cases;
- Second, this could lead to significant delays in investigations and consequent filing of lawsuits (which can be a problem in view of the 3 year statute of limitations);
- Third, with numerous boxes of documents in transit and documents not readily available and with new investigators assigned to the cases, fee counsel may encounter difficulties in pursuing these cases expeditiously; and
- Fourth, the savings resulting from the closings of at least some of these offices may be illusory; for example, we have been told that over 300 contractors have been hired in the Baton Rouge office alone, to take over the work of RTC

employees and that Tampa RTC investigators have been detailed to the Atlanta office, in preparation for the closing of the Tampa office, all at great per diem and travel costs.

It appears that the upcoming closure of the RTC Investigations' offices in Houston (now planned for May 1993), Baton Rouge (in June 1993), and Tampa (date unknown) may mean that any such adverse impacts may continue.

The Subcommittee's inquiry is at a very early stage, and we have not heard from all sides in this matter, so we are not in a position to render any conclusive findings as to whether RTC lawsuits and criminal referrals have been and will be adversely impacted by such closures. While normally we would await the completion of the Subcommittee's investigation and hold a hearing to air all sides, I am somewhat concerned that by the time we were to hold a hearing, it could be too late.

For that reason, I believe it would be appropriate for you or the Oversight Board to look into this matter now and determine whether any changes, temporary or permanent, are needed concerning the RTC's imminent closures of RTC Investigations' offices and also whether any action is necessary to remedy the impact on cases from closures which have already occurred, to ameliorate any such possible adverse impacts.

I would appreciate a response to this letter and also a briefing of Subcommittee staff by May 3, 1993. Please feel free to have your staff or Oversight Board staff contact Subcommittee Senior Counsel Stephen McSpadden or Chief Counsel Thomas Kahn. Thank you for your cooperation.

Sincerely,


John M. Spratt, Jr.
Chairman

cc: Peter Monroe
President
RTC Oversight Board

IMPORTANCE OF TEAMWORK

To: John T. Reynolds@legal@rtcdalsou
 Bradley M. Elbein@legal1@rtcdalgul
 Rex Taylor@leg2@rtcdalmet, Thomas Burnside@legal@rtcdal
 Carolyn P. Perry@LEGAL@RTCATLBAY
 Arturo Vera-Rojas@LEGAL@RTCDAL

Bcc:

From: " " " "

Subject: Reorganization Transition

Date: Thursday, April 16, 1992 14:05:11 CDT

Attach:

Certify: N

Forwarded by:

To facilitate the movement of case files in the new reorganized structure it would be wise, while support help still exists, to box up and inventory all files in cases where total closeouts have been drafted and signed. We can then hold them in storage until we know where to ship these documents. As to 1993-1994 statute cases, those cases in which we have merit and money already established, we should think about hiring counsel. As to 1992 cases, I expect that the current attorney will have completed asset searches on the targets and made a determination regarding whether to proceed with suit by now and has made arrangements to hire counsel in the meritorious cases. Conversely they should be working on closeouts of the non-meritorious 92 cases as well. Those 94 and late 93 cases not falling into the above category should also likely be inventoried and boxed by thrift in preparation for the attrition factor between now and September. (non-active cases only). Once the final selections are made, whoever is Section Chief will then have the responsibility of reassigning the cases which will then have to be worked on a priority basis

To: Thomas Burnside@LEGAL@RTCDAL
 Cc:
 Bcc:
 From: @Legal-pls@RTCDC
 Subject: re: BEXAR/EY/TOLLING III
 Date: Sunday, February 23, 1992 13:40:09 CST
 Attach:
 Certify: N
 Forwarded by:

 No -- I intend to keep pushing the defendant class idea -- we are already using it in -- and Bill and Jerry are only concerned if we name all of the partners individually by name. They like the class approach. By the way, no thanks are necessary for the work this case has required of me so far -- this is part of our implicit deal -- I support you here and you support me there. Besides, I'm always going to be patient with creative, intelligent efforts like those you've displayed on this case.

How soon will I get BancPlus back? I noticed that a copy of my corrections was in the package I received from Sharon recently -- but I did not see the corrected memo. We're going to be on the fast track again, aren't we? To answer your question -- I think we may want to have a draft assignment and memo accompany the ATS memo, so that I can start that process earlier. JVT advised me that I couldn't do anything on Bexar until Friday because Graham was out of town -- but now I wonder if having the memo waiting on his desk wouldn't have been better.

Thanks for your and Sharon's appreciation of the drama of my getting the assignment from Seelig -- I enjoyed pulling it out of the fire. Every thing I now is accompanied by so much planned effort, it felt good to find out that I can still get the agency to move on a "simple" crisis. Did you know how many stops were pulling out? Apparently had been calling JVT trying to get him to do something ... but it wasn't until I asked JVT whether I should call the Chairman that he suggested calling Seelig might be a better first choice. I think he thought I would do it.

To: Roberta H. Clark, Anne E. Meroney@legal-PLS@RTCATLMD
 Thomas Burnside@Legal@RTCDAL
 LaVern A. Pritchard@Legal@RTCKCNOR, R. Lee Andersen
 April A. Breslaw, Christopher A. Byrne, James P. Clark
 Roberta H. Clark, David G. Eisenstein, Kathleen Flake
 Mira N. Marshall, Manuel A. Palau, Suzanne Rigby
 Harold M. Sklar, Robert J. Soffer, Jon A. Stewart, Susan Tibolla
 Sharon D. Zissman, Bradley M. Smolkin@LEGAL@RTCATL
 Julie F. Yanda@LEGAL@RTCKC, Sharon Howard@LEGAL@RTCDAL
 Bruce Pederson@Legal@RTCDEN

Cc:
 Bcc:
 From: Tolling Agreements
 Subject: Tolling Agreements
 Date: Thursday, February 27, 1992 8:22:37 CST
 Attach:
 Certify: N
 Forwarded by:

I believe you should all be aware of Tom Burnside's achievement in negotiating a tolling agreement with Ernst & Young in the BankPLUS matter. The tolling agreement is the result of long term negotiations between Tom and EY, and represents a real breakthrough for us. It is a very favorable document that purports to bind not only EY, but its partners personally. More importantly, EY has recognized that this tolling agreement is a model for other cases -- they simply offered me the same deal as the final BankPLUS agreement, except that I could choose the dates for the tolling commitments to end.

For those of you who have dealt with EY can appreciate what a turn around in their attitude this represents. Together with Suzanne Rigby's work on the subpoena enforcement, Tom's efforts seem to have developed some respect for our ability to coordinate what we are doing, and to take and hold tough negotiating positions. Maybe this means we will be able to waste less time on meaningless preliminary fencing.

All of you who have EY cases, and those of you who have tolling issues involving other firms, will want copies of the BancPLUS agreement. I plan to use it as the basis for discussions today with Peat Marwick. I will make it available to everyone here in DC; those elsewhere can contact me or Tom. (Of course I'm volunteering Tom without consulting him.) In addition, I plan to circulate in the next couple of days a package with the materials I have on defensive class actions against partnerships, including a draft complaint and back-up materials.

To: Thomas Burnside@LEGAL@RTCDAL
 CC: 1

Bcc:
 From:
 Subject: EY Tolling Agreement
 Date: Friday, February 28, 1992 8:34:23 CST
 Attach:
 Certify: N
 Forwarded by:

 Tom--

CONGRATULATIONS!! Do you walk on water now? You've done a tremendous job. It's nice to know that WDC recognizes and appreciates what you've accomplished.

Since I drafted you for assistance, I'd like to ask for a copy of the tolling agreement that you used with EY. I'll make sure it gets circulated throughout our region.

Take care--and enjoy the limelight.

To: Thomas Burnside@LEGAL@RTCDAL
 Cc: Sharon Howard@LEGAL@RTCDAL
 John B. Beaty@Legal-pls@RTCDC
 Bc:
 Fr : @Legal-pls@RTCDC
 Subject: re: EY Tolling Agreement
 Date: Sunday, March 1, 1992 9:17:25 CST
 Attach:
 Certify: N
 Forwarded by:

 Thanks for the helpful explanation of the status of the EY tolling agreement. I am struggling to work out the details of his defendant class - your combined efforts will really contribute to RTC's ability to prosecute accountant liability claims vigorously.

and I are impressed with what you have been doing, and felt that you deserve credit and recognition for what you have accomplished.

To: Thomas Burnside@LEGAL@RTCDAL
 Cc:
 From: @Legal-pls@RTCDC
 Subject: re: "Say it ain't so"
 Date: Monday, April 13, 1992 14:38:18 CDT
 Attach:
 Certify: N
 Forwarded by:

 Thanks, Tom. Working with you has been a real pleasure. Our paths will continue to cross, I am sure. I asked for a May 3 release date - but the crisis here may result in some slippage. Before long, RTC will sunset and be folded back into FDIC. Since I am likely to handle PLS appeals, we will no doubt work together again. Meanwhile, good luck and best wishes - you are making a gigantic contribution PLS - just wish we could get you involved in the EY coordination effort. John says you are swamped with cases, GT coordination, and a Pru Bache project/memo.

To: Robert T. Staples@Invest@RTCDALGUL
 Beth M. Williams@Invest@RTCDALGUL
 Salvatore Bernardino@INVEST@RTCATLBAY
 Salvatore Bernardino@Invest@RTCDALGUL
 E. Neal Findley@Invest@RTCDALGUL
 James L. Adams@Invest@RTCDALGUL
 James Conroy@INVERTCDALMET, Chris Jones@EXEC@RTCDAL
 Chris Jones@INVERTCDALMET
 Bcc:
 From: Thomas Burnside@LEGAL@RTCDAL
 Subject: DLJ settlement
 Date: Monday, June 8, 1992 12:01:57 CDT
 Attach:
 Certify: N
 Forwarded by:

 DLJ has agreed to settle BancPlus for \$2.5 million. Investigations in general--and Bob, Beth, and Sam in particular---deserve a large portion of the credit for bringing this portion of the case to a position where we could get the recovery. Now on to

To: Thomas L. Hinds@Legal-pls@RTCDC
 CC: Mark Gabrellian@Legal-llt@RTCDC
 Bcc: Thomas Burnside@LEGAL@RTCDAL
 Subject: Accounting Expertise -pls
 Date: Monday, June 8, 1992 9:13:56 CDT
 Attach:
 Certify: N
 Forwarded by:

If one of the candidates for PLS vacancies bows out, you may wish to consider bringing Tom Burnside of the Dallas office up to Washington. He has concentrated on accountant liability claims in the former Southwest Region and has developed several good claims against EY. From what I have seen, his work is outstanding. He does a good job of detecting the warts in potential claims - a valuable trait. His work is creative and solid: for example, he aggressively pursued an insurance fund claim arising out of Bexar and received an assignment of the claim from the FDIC as manager of the funds. This novel but thoroughly documented claim will be one of the more attractive RTC claims that RTC can propound in seeking a global settlement with EY. Tom has volunteered to help pull together claims information for our discussions with EY and is an energetic and cooperative team member. Because of his in depth understanding of accountant liability he would make a valuable contribution to the nationwide PLS effort if he were recruited to help with accounting claims. Naturally, he has substantial experience with other professional liability claims as well - but I am particularly impressed with his expertise re accounting issues.

To: John T. Reynolds@legal@rtcdalsou
 Bradley M. Elbein@legal1@rtcdalgu1
 Rex Taylor@leg2@rtcdalmet, Thomas Burnside@legal@rtcdal
 Jim Cooper@EXEC@RTCDAL, James Conroy@INVERTCDALMET
 Thomas L. Hindes@Legal-pls@RTCDC
 David G. Eisenstein@Legal-pls@RTCDC
 Mark Gabrellian@Legal-pls@RTCDC

Bcc:
 From: Sharon Howard@LEGAL@RTCDAL
 Subject: DLJ Settlement
 Date: Tuesday, June 9, 1992 9:27:35 CDT
 Attach:
 Certify: N
 Forwarded by: David G. Eisenstein@Legal-pls@RTCDC

Comments by: David G. Eisenstein@Legal-pls@RTCDC
 Forwarded to: Thomas Burnside@LEGAL@RTCDAL
 Comments:

Great work, Tom. On the pro tanto/pro rata you might want to talk to Gene Comey who is doing a big case in OK on how to bind all the parties that may want contribution down the road.

----- [Original Message] -----

Congratulations goes to Tom Burnside who played hardball with Donaldson Lufkin & Jenrette on a claim arising out of BancPlus. The original settlement meeting I attended with DLJ in Dallas, the settlement number discussed was \$100,000. Several weeks later, the settlement number was up to \$2.1 million which received serious consideration. Tom was adamant however, that after discounting the claim to present value and discounting it for litigation risks, that \$2.5 million was the right number to settle the claim. DLJ ultimately capitulated and a settlement memo is being drafted although there are a number of outstanding issues such as seeking a ruling from the Court regarding pro tanto vs. pro rata settlement credit and what we do with the unnamed EY defendants to bind them to the settlement credit ruling. We will have recouped all costs of case preparation to date and funded the future litigation costs against the other defendants with this settlement.

CONGRATULATIONS TOM!

To: Disne Mendoza@INVERTCDALMET
 : James Conroy@INVERTCDALMET
 William J. DePugh@INVESTERTCATLSOU
 Rex Taylor@LEG2@RTCDALMET

Bcc:
 From: Thomas Burnside@LEGAL@RTCDAL
 Subject: Metropolitan
 Date: Tuesday, July 21, 1992 18:18:05 CDT
 Attach:
 Certify: N
 Forwarded by:

This probably falls within the "Tell me what I don't already know category..." but I wanted to formally acknowledge what a great job Karen did on the ATS preparation and the investigation leading up to it. Karen willingly gave whatever time it took to get the job done and her insight was critical to the final product. Often Karen served as the primary coordinator of the investigation and with respect to Rad, she acted as the day-to-day supervisor. Indeed, Karen was the one who most frequently kept the case moving when everyone else became distracted on other projects. Karen was extraordinarily goal oriented, organized, self-motivated and eager in the investigation/ATS process and should be commended for her work on Metropolitan. Quite frankly, the case would not have been developed without her efforts.

To: Rex Taylor@LEG2@RTCDALMET
 Cc: 1
 'C:
 Jm: Thomas Burnside@LEGAL@RTCDAL
 Subject: Overtime
 Date: Saturday, July 25, 1992 7:52:47 CDT
 Attach:
 Certify: M
 Forwarded by:

 In view of our differing positions regarding overtime/comptime and in order to properly develop my cases, I will neither expect nor request overtime or comptime in the future. I will still work such additional hours that are necessary to properly investigate and handle my cases as part of my professional responsibility.

I do have some additional observations regarding your overtime/comptime rules:

(1) Overtime is not the equivalent of comptime. I requested comptime so that I could partially compensate my family for the evenings and weekends I was working to develop my cases. Obviously, a few extra dollars in a paycheck does not serve such purpose.

(2) I find the concept of overtime as applied to professionals to be demeaning. I work as much as 30 extra hours a week when I am working on an ATS or other major project. I willingly put such time in because of a sense of professional pride and in order to obtain the satisfaction of doing the best job I can. I do not and will not put in such hours for the \$5 to \$15/hour overtime. My time is worth more than that and I would rather donate or "eat" the time.

(3) I also find the concept of "asking for permission" to work the hours necessary to properly develop a case to be antithetical to professional ethics. Every attorney must make the personal decision on the amount of time necessary to meet his or her own standards as well as general standards. No attorney can abdicate such decision. Indeed, I believe that a FLS attorney that confines his or her work hours to a "40 hour week" on a regular basis will end up closing-out cases that should be brought because of the excuse that "we did not have enough time or evidence." Alternatively, insufficient investigation might result in suits that should not be brought.

(4) I find it ironic that in the last month or so, I have submitted two Authority to Sue memos and two Authority to Settle memos that have received virtually no substantive comment from you but yet you want to tightly control overtime/comptime requests.

In summary, I view this matter as closed. I will not trouble you any further with comptime requests and the RTC will still receive my continued efforts in developing and pursuing meritorious, cost-effective cases. Its a "win-win" situation for you and the RTC.

To: Thomas Burnside@LEGAL@RTCDAL
 CC: Rex Taylor@LEG2@RTCDALMET
 Thomas L. Hinde@Legal-pls@RTCDC
 Bcc:
 From: Mark Gabrellian@Legal-pls@RTCDC
 Subject: BancPlus
 Date: Wednesday, September 2, 1992 9:36:09 CDT
 Attach:
 Certify: N
 Forwarded by:

 Thank you for the revised analysis section on the settlement recommendation memo for the Donaldson, Lufkin & Jenrette claim. I've reviewed it with Tom Hinde who has given the go-ahead. Close the deal. Good work.

To: Thomas Burnside@LEGAL@RTCDAL
 Rex Taylor@LEG2@RTCDALMET
 CC: Thomas L. Hinde@Legal-pls@RTCDC
 Bcc:
 From: Mark Gabrellian@Legal-pls@RTCDC
 Subject: BancPlus
 Date: Wednesday, October 7, 1992 11:35:32 CDT
 Attach:
 Certify: N
 Forwarded by:

 Good work on the BancPlus settlements and the recommendation memos. I have reviewed and initialed all three and am passing them on to Tom Hinde.

To: William J. DePugh@INVERTCDALMET
 , Diane Mendoza@INVERTCDALMET, Chris Jones@INVERTCDALMET
 Cc: Rex Taylor@LEG2@ERTCDALMET
 Bcc:
 From: Thomas Burnside@LEGAL@RTCDAL
 Subject: Murray
 Date: Thursday, November 5, 1992 7:13:02 CST
 Attach:
 Certify: N
 Forwarded by:

 I want to commend Mike Shuler for his extraordinary efforts in developing the accounting claim in Murray Savings. Mike provided the expertise, long hours, and "passion" needed to push the claim through the system; the claim would not have been developed without his efforts. Examples of Mike's work include:

- He personally reviewed workpapers in order to focus the work of outside consultants and fee counsel. This work paid off in the first couple of meetings with a consultant that we were using for the first time. The consultant was sloppy and careless in his review of the workpapers and financial statements. Mike immediately detected the problems and we were able to replace the consultant in a timely manner.
- Mike continually challenged the consultants, fee counsel and myself on our views of the case and effectively communicated his "outrage" with the problems with the audit. Such outrage is essential to the ultimate success to a lawsuit or settlement discussions in the it transforms seemingly arcane technical areas into a moral crusade. He refused to let anyone to just go through "the motions."
- He put in countless hours--including weekends and long days--to ensure a workproduct that met his standards. While Mike strived to properly delegate work where appropriate, he willingly pitched in when he saw others (including myself) struggling.

I could continue with other examples but one thought probably summarizes my thoughts---

I have dealt with numerous consultants, fee counsel, and others in developing accounting malpractice cases. Some were very good; some were terrible. If I could have only one person to help me on developing such a case---it would be Mike Shuler.

To: William J. DePugh@INV@RTCDALMET
 Chris Jones@INV@RTCDALMET, Diane Mendoza@INV@RTCDALMET
 Cc: Rex Taylor@LEG2@RTCDALMET
 Bcc:
 From: Thomas Burnside@LEGAL@RTCDAL
 Subject: Murray
 Date: Thursday, November 5, 1992 8:07:22 CST
 Attach:
 Certify: N
 Forwarded by:

I would like to commend Mary Jo Baldwin for her work on Murray. Mary Jo has had a dual role in Murray and has been outstanding in both. Most recently, she has been assisting Mike Shuler on the accounting claim. Even though the accounting investigation was not "her job", she willingly pitched in to develop the claim---even if it meant weekend work. Her insights and help really made a difference. On a lighter note---she was so insistent that we meet the November 4 deadline, that she camped out at fee counsel's office in order to ensure that the attorneys (including me) came to conclusion on the project. Nobody was "going to mess with" Mary Jo in failing to meet the deadline!

Mary Jo has made the most difference in her role as Lead Investigator on the director's and officer's claim. I received responsibility for Murray after the filing of the suit and the initial wave of discovery. Accordingly, I was not in a position to adequately review our factual responses. Mary Jo filled the void and spent an enormous amount of time working on the answers to discovery. In that capacity, she was very proactive and took a leadership position in coordinating the discovery. She deftly balanced the needs of fee counsel to appear cooperative in responding to discovery with the strain of such responses on internal RTC resources.

In summary, Mary Jo has been a superb lead investigator on Murray. Her blend of hard work, dedication, organization, and leadership have transformed a potential problem into a (relatively) smooth case.

To: James P. Clark@Legal-pls@RTCDL
 Cc: Neyaa L. Day@LEGAL-PLS@RTCKC
 B.J. Hickert@LEGAL-PLS@RTCKC
 Jann L. Harley@Legal@RTCKCCHI
 Thomas Burnside@LEGAL@RTCDAL
 Bcc:
 From: @LEGAL-PLS
 Subject: Pru Bache ATS
 Date: Tuesday, December 1, 1992 9:11:33 CST
 Attach:
 Certify: N
 Forwarded by:

Jim--

Our Acting AGC signed off on the PruBache ATSettle Memo. I've gotten the green light from the business side, so as soon as JT gets back into the office (he's in Chicago today), we'll have the memo formally approved at this level.

Tom, thanks for the fine work you did on this case. I really enjoyed reading your memo, and I admired the skill and analysis you obviously had put into this case. Take care.

To: .@LEGAL-PLS
 Cc:
 Bcc: 1
 From: Thomas Burnside@LEGAL@RTCDAL
 Subject: SF 171
 Date: Wednesday, December 9, 1992 15:40:26 CST
 Attach:
 Certify: N
 Forwarded by:

I am sending you the attachments to my 171 (I skipped the form itself). I appreciate your willingness to act as a reference. I posted for the DC PLS slots as well as any PLS slots outside of Dallas. I am also going to make a pitch for a lateral transfer to DC as a Senior Attorney if they need me sooner than the end of the posting process (or afterward!). In any event, you may get a call (that would be a good sign!) and I wanted you to have my resume and performance evaluation if you were called. Anyways, I'm pretty proud of my last two years. Its not bad for a midwestern fidelity and surety lawyer.

FYI-- has gone to bat for me in DC. While she has spoken with Tom Hindes, I think the key is Mark Gabrellian. Mark has responsibility for Dallas and has reviewed at least some of my work product. If he wants me, I think they will make room for me; if not, I don't stand a chance. In all modesty, however, I would gladly base my chances on my work product.

One other touchy point--the region down here is going down hill fast. We have lost Asher out of Houston and the Baton Rouge and San Antonio attorneys are not happy about the move. I'll let you get Carl's feelings direct but Rex really gave him a raw deal. The bottom line is that DC might not be to eager to take me unless they realize that keeping me down here with Rex will not work in the long term (why would I use "RTC" and "longterm" in the same sentence?!). On the other hand, I don't want to appear to give an ultimatum since I really like what I am doing and do not want to appear disgruntled.

I would appreciate your "read" on the situation and any suggestions that you might have.

P.S. Doesn't it seem like an eternity since we joined the RTC? Who ever would have imagined all that transpired. Yet, for all the grief, I think we were given the professional opportunity of a lifetime. It will be hard to go back to normal cases!!! Take care.

To: Chris Jones@INVERTCDALMET
Cc:
Bcc:
From: Thomas Burnside@LEGAL@RTCDAL
Subject: Bexar
Date: Monday, December 21, 1992 9:06:39 CST
Attach:
Certify: N
Forwarded by:

I would like to commend Don Woods and Wayne Kalina for their hard work and dedication in developing the Bexar Savings professional liability claims. As the Lead Investigator on Bexar for almost two years, Don did an extraordinary job in managing investigators and outside consultants as well as document control. Don's experience and insight also helped us focus upon issues that we might otherwise have missed.

As the San Antonio Accountant Liability Investigator, Wayne was instrumental in supervising the accounting consultants in both substantive and budget areas. Wayne's experience and insight was essential for an independent evaluation of Kenneth Leventhol's work product.

Both Don and Wayne willingly gave the "extra effort" that such a large claim needed in order to be effectively pursued and such efforts were a substantial factor in the RTC recovery against Ernst & Young and probable recoveries against the directors and officers. Total recoveries on the Bexar professional liability claims are expected to exceed \$50 million.

To: LEGAL-PLS()
 Cc:
 Bcc:
 From: Thomas Burnside@LEGAL@RTCDAL
 Subject: re:
 Date: Friday, January 15, 1993 12:25:49 CST
 Attach:
 Certify: N
 Forwarded by:

 Thanks for the info. I need to figure out what I want to do in the next few years before I make a moving decision. Also, Mimi has a fair amount of input on the decision since she does not want to caravan around the country from one RTC posting to another without some legitimate career goals in mind. (She doesn't think that moving away from a particular boss is an adequate career goal by itself---she does think that DC would be a good move)

In any event, it looks as if the rosters will force me to make at least some preliminary decisions in the very near future. I will keep you posted and probably bounce some ideas off you.

P.S. Mimi and I are expecting our fourth child!

To: Thomas Burnside@LEGAL@RTCDAL
 Cc:
 Bcc:
 From: -pls(
 Subject: PruBache Glory
 Date: Sunday, January 24, 1993 17:39:55 CST
 Attach:
 Certify: N
 Forwarded by:

 Tom, I wasn't trying to hog all the glory in hot topics discussion of the PruBache settlement. I wrote a longer version featuring you and Loughran. They did a nice job of editing it but took out any mention of you.

Anyway, according to our figures, you appear to be PLS's biggest breadwinner.

To: Thomas J. Burnside@DAL-LEGAL12C@RTCDAL
 Cc:
 Bcc:
 From: -PLS
 Subject:
 Date: Thursday, March 4, 1993 18:05:14 CST
 Attach:
 Certify: N
 Forwarded by:

 Tom--you would hate it here. . . is working us to death--but we are loving every minute. I have meant to tell you for months what fine work I thought you did on the Pru-Bache settlement--both substantively and in coordinating the process. That was quite an undertaking, yet the process was handled so smoothly. I don't think anyone in the world has any illusions about your singlehandedly putting the deal together. I guarantee you received no help from me.

As crazy as it gets here, and it does--I truly believe now that life is actually crazier elsewhere!

To: -PLS
 Cc:
 Bcc:
 From: Thomas J. Burnside@DAL-LEGAL12C@RTCDAL
 Subject: re:
 Date: Monday, March 15, 1993 9:15:28 CST
 Attach:
 Certify: N
 Forwarded by:

 Thanks for the news. I need a little time to make the decision. The question is not whether I leave here but where do I go?

I had to postpone my trip to St Louis until Friday because the GAO is coming to Dallas on Weds. and Thurs of this week (unless the snow storm delays them.) I'm glad they are moving so quickly -- I would like to resolve as much (or perhaps all) of the situation down here as possible before I leave.

Please let me know your timetable for a decision. The start date from my perspective would probably be mid-April although early April is possible. I will touch base with you next Monday to let you know how it went in St Louis. At this point, it looks like I will be leaving the RTC but I have been "flip-flopping" all month.

BURNSIDE GRIEVANCE RECORD

To: - John H. Lomax@EXEC@RTCDAL
 E. Glion Curtis@Legal-sc@RTCDC
 E. Glion Curtis@Legal-Exec@RTCKC

Cc: Arturo A. Vera-Rojas@DAL-LEGAL15A@RTCDAL
 Rex Taylor@LEG2@RTCDALMET
 David A. Stockwell@DAL-LEGAL12A@RTCDAL

Bcc:

From: Thomas J. Burnside@DAL-LEGAL12C@RTCDAL

Subject: Grievance against Messrs. Taylor and Vera-Rojas

Date: Wednesday, March 3, 1993 14:31:21 CST

Attach:

Certify: N

Forwarded by:

Earlier this afternoon, I distributed a memorandum entitled:

"Step One Rebuttal and Step Two Appeal of
 the February 5 Grievance against AGC Vera-Rojas
 and Section Chief Taylor

and

Report of Improper Conduct by RTC Employees
 under your Supervision."

AGC Vera-Rojas would not respond to my request that he identify his immediate superior(s) so I have sent the memo to you based upon my information and belief that you jointly are such superiors. If I am incorrect, could you please identify the correct person(s) who should receive the memo and let me know so that I may send a copy of the memo to them as well.

RETALIATION AGAINST DALLAS INVESTIGATIONS

To: James R. Dudine@Oper-inv@RTCDC
Cc:
Bcc: Chris Jones@FSC-INVEST3@RTCDAL
From: William J. DePugh@FSC-INVEST2@RTCDAL
Subject: PLS/Investigations problems
Date: Thursday, April 22, 1993 15:12:42 CDT
Attach:
Certify: N
Forwarded by:

I recommend that the OIG Audit function be assigned to identify, analyze, and document the perceived problems between PLS and Investigations in the Dallas Territories. I can think of no other solution to this matter since a solution does not seem at hand. My attempts to reconcile are apparently not received as being in good faith and this is affecting the operation.



RESOLUTION TRUST CORPORATION
Resolving The Crisis
Restoring The Confidence

INVESTIGATIONS DEPARTMENT
P.O. Box 45645, 6343 Forest Park Rd., Ste. 600
Dallas, Texas 75245-0045 - 214-982-4400 - FAX 214-982-4400

MEMORANDUM

TO: James R. Dudine
Director of Investigations

FROM: William J. DePugh
Director, Field Investigations

DATE: July 19, 1993

SUBJECT: Dallas Investigations Management

Based on our telephone conversation on Friday, July 16, 1993 I am concerned and grieved that you would discuss Dallas organization, personnel and staffing matters with members of Kansas City Investigations and Washington P.L.S. management without consulting with, or notifying me or my direct supervisor, Jim Messec, Vice President for Operations and Accounting.

I was not aware that you perceived problems in FSC or Investigations management since you have not addressed them to us. Dallas has statistics that are equal to the other offices and has a number of high profile litigation cases going forward. It appears that you are depending on PLS information rather than the Dallas FSC data.

In the absence of any manual, books of procedures or standardizing policies from your office, each office is functioning according to their own plans of organization and case needs. I believe Dallas achievements will attest to my management team's skill and dedication.

Based on Friday's conversation, our previous conversation regarding what I provided GAO (congressional oversight) concerning PLS problems and the rampant rumor that you want Kansas City Investigation management to replace Dallas management, I must conclude that your actions are an attempt to retaliate against Dallas for revealing PLS problems and asking for organization and staffing remedies. At a minimum, your actions have embarrassed us and diminished our professional status among our peers.

I believe that I am following my mission statement and position benchmark. Unless formerly notified otherwise, I will continue to do so under the direct supervision of Jim Messec, Vice President for the Dallas Operations and Accounting.

cc: Jim R. Messec



RESOLUTION TRUST CORPORATION

**Resolving The Crisis
Restoring The Confidence**

MEMORANDUM

TO: James R. Dudine
Director of Investigations

FROM: Diane M. Mendoza
Assistant Director, Dallas Investigations

DATE: July 20, 1993

SUBJECT: Dallas Investigations Management

This morning, Vice President "for Operations and Accounting Jim Messac shared with me an e-mail message (copy attached). That message was sent to him this morning by you, and contained a reference to me which causes me great concern. The reference is "... explore options available to insulate Jones and Mendoza from direct contact and "client-like" responsibility o er (sic) PLS cases."

As I stated, this phrase caused me great concern, as the RTC "benchmark" for my position [Department Head (Investigations), LG-301-15] contains several references which require interaction and direct contact with PLS. They are as follows:

"Directs and coordinates the investigative activity at the Field Office site; has overall responsibility for supervision of investigation and clerical personnel assigned to the unit; has responsibility for establishing the practical criteria to develop a claim and for planning program activities to ensure optimal recovery by the RTC on insurance policies and claims; reviews and makes recommendations concerning the viability of claims.

Reviews and evaluates complex legal documents for development of lawsuits; identifies privileged documents; assists local counsel in litigation; subsequently, serves as witness at depositions and trials in capacity of official record holder of the depository of information for each claim.

Coordinates information between the liquidation/consolidation site, Field Office, Legal Division, and investigators from the insurance companies; must work very closely with the Legal Division

To: William J. DePugh@FSC-INVEST2@RTCDAL
 Cc: Jim R. Messer@FSC-EXEC@RTCDAL
 Bcc:
 From: James R. Dudine@Oper-inv@RTCDAL
 Subject: re: Meeting
 Date: Tuesday, July 20, 1993 7:30:38 CDT
 Attach:
 Certify: N
 Forwarded by:

 Bill, the scenario you present in your July 19 memo to me is way off the mark.

I requested a meeting with you to accomplish the following objectives and to attempt to fit these objectives into your personal plans and timetables:

1. Get your unequivocal commitment to establish a cooperative program with PLS in Dallas.
2. Discuss ways to minimize the potential for resurfacing old animosities, e.g. explore options available to insulate Jones and Mendoza from direct contact and "client-like" responsibility over PLS cases.
3. Begin to inject a Blue Ribbon type process in the Dallas office, Kansas City has the most fully developed and successful program, therefore, either KC people could come to Dallas for a while to get the program started or you and others could visit KC to get acclimated to the process. This is an important goal and like it or not KC has done well with this approach.

Your reference to rampant rumors about a KC takeover stem from, I suppose, contingency plans discussed as options in the event you did not return from your medical leave or decided to retire at the end of this year

To: Anne M. H. Sigerstad@EKEC@RTCDAL
 Cc: Thomas Bambricke@ADMIN@RTCDAL
 William J. DePugh@PSC-INVEST2@RTCDAL
 L. Richard Iorio@Investigations@RTCKCMID
 Michael R. Vanvalkenburg@Investigations@RTCKCMID
 Bcc:
 From: Donald A. Sweeters@Investigations@RTCKCMID
 Subject: Department Head Positions
 Date: Friday, August 6, 1993 12:19:48 CDT
 Attach:
 Certify: N
 Forwarded by:

 Reorganization lines of authority and control have placed the Dallas Office of Investigations Office under the Kansas City Office of Investigations.

On behalf of L. Richard Iorio, Kansas City Office, Field Investigations Officer and William J. DePugh, Dallas Office, Field Investigations Officer it is requested that six (6) internally posted Supervisory Investigator LG-14 positions be posted for Dallas to Open August 9, 1993 and to run the minimum time for internal positions to run.

The selecting officials for these positions will be Mike R. Van Valkenburg, Manager, Field Investigations and Mr. L. Richard Iorio with the Kansas City Office and Mr. William J. DePugh, Field Investigations Officer.

Mr. Van Valkenburg will be temporarily assigned to the Dallas Office for an indefinite period of time.

Mr. DePugh can be reached Mon 08/09 and Tues 08/10 in Kansas City at (816) 968-7212.

To: Anna M. Kautzman@Oper-inv@RTCDC
 Cc: 1
 Bcc:
 From: Michael R. Vanvalkenburg@INVEST-2@RTCKC
 Subject: re: Geez
 Date: Wednesday, September 1, 1993 9:12:25 CDT
 Attach:
 Certify: N
 Forwarded by: Anna M. Kautzman@Oper-inv@RTCDC

 Comments by: Anna M. Kautzman@Oper-inv@RTCDC
 Forwarded to: William J. DePughe@FSC-INVEST2@RTCDAL
 Comments: _

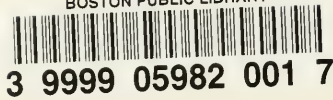
FYI

----- [Original Message] -----

Got your e-mail, I agree with everything you said. I got word that my e-mail to Richard which was forwarded to Dudine had been circulated or has been discussed with some of the Investigators. This was the e-mail where I addressed Arturo's comments about investigations. At the time I wrote that e-mail I thought the problem was 50 - 50 with PLS and Investigations. Now after all I have read and been exposed to, I believe the problems were more 80% PLS and 20% Investigations. I think that some of the Investigators and maybe Chris and Diane (if they have been told about or read about my memo to Richard) have the wrong idea about how I feel about Investigations in Dallas. Onward and upward!



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